



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISC.APPL NO.30 OF 2019

GEOFFREY MWANGI NDIRANGU.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. This is a ruling on application for resentencing. The applicant had been charged and convicted of the offence of **Robbery with violence contrary to Section 296(2) of the Penal Code** in the year 1994 Criminal Case Number 2249 of 1994 but the file went missing and he was again charged with the same offence in the year 1996 in Criminal Case Number 1229 of 1996 which gave rise to this application. He was sentenced to death. He has exhausted his right of appeal by filing appeal in both the High Court and Court of Appeal. His sentence was later commuted to life imprisonment in the year 2003. He has now served 25 years 8 months in prison. He stated that he was 34 years old at the time of sentence and he is now 60 years old.

2. The applicant relied on the case of **Francis Karioko Muruatetu Vs Republic [2017] eKLR** to argue that the mandatory sentence imposed by the trial Court and upheld by the High Court and Court of Appeal is excessive and harsh and sought an appropriate sentence.

3. The applicant stated that he regrets having committed the offence herein he said he has served 25 years 8 months in prison. He urged the Court to look at the period he has served in prison and assured the Court that if given a second chance, he will not repeat such an offence. The applicant stated that while in prison has learnt dress making and obtained certificate Grade 2 and if released will start shoe making. He said he has people who are willing to help him start the business.

4. In response **Ms. Rita Rotich** for the state opposed the application and stated that the applicant was a ringleader of a gang who had influence over others to carry out serious offences. She submitted that they used guns, pistols and knives to carry out offences. She urged the Court to consider that the victim was stabbed and sustained serious injury and the sentence imposed was intended to deter others. She stated that the applicant has had no retribution to his victim. She urged the Court to dismiss the application.

5. In a rejoinder, the applicant stated that they had one pistol and they did not have knives and no knife injury was inflicted; that P3 produced never showed any injuries.

ANALYSIS AND DETERMINATION

6. The applicant herein was sentenced to death which was later commuted to life imprisonment. The sentence imposed was the mandatory sentence provided by statute. Mandatory nature of sentences was however declared unconstitutional by Supreme Court in **Francis Karioko Muruatetu Vs Republic [2017] eKLR** where the Supreme Court declared mandatory nature of sentences unconstitutional as it takes away the discretion of the trial Court to determine sentence to impose upon considering circumstances of the case and mitigating factors of the offenders. The Supreme Court found that the taking away of discretion of the Court renders the mitigating factors superfluous.

7. There is no doubt that the offence committed by the applicant was serious and he deserved deterrent sentence. The applicant however regrets his action and has taken his being in prison positively and learnt skill of shoe making which will enable him earn a living if released.

8. I take note of the fact that the applicant was 34 years old when he was sentenced and he is now 60 years old. In my view with his age now, he is unlikely to be a danger to the community if released. He is now a senior citizen who should live the remaining period of his life peacefully. I see merit in the application herein.

9. FINAL ORDERS

1. Sentence is reduced to sentence already served.

2. The applicant to be released unless lawfully held.

Ruling dated, signed and delivered via zoom at Nakuru This 30th day of July, 2020

RACHEL NGETICH

JUDGE

In the presence of:

Jeniffer - Court Assistant

Rita for State

Applicant in person