



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

HCR. PET. NO.9 OF 2020

JESSE MWIGA MUNGAL.....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**. 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 on 8th August 2009. He has now served 19 years 6 months in prison.

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 has studied paralegal work while in prison and has been assisting remandees and prisoners for the last 16 years. He said he is now 41 years old and if released, he will go and do farming as he has land in Bahati. He said at the time he was arrested; he was not married but had a girlfriend who got married to a person who later killed her. He said he has 3 sisters who have been helping him while in prison. He promised not to go back to crime and stated that he is now a born again Christian having repented while in prison. He sent prison recommendation letter to Court via email to confirm that he has reformed.

4. In response **Ms. Rita Rotich** for the state opposed the application and urged Court to consider aggravating circumstances. She submitted that at the time of the offence the applicant was armed with dangerous weapons being a club and a panga. She urged the Court to consider that there was serious life changing incident that occurred against the victim. She said the victim was cut with a panga and the sentence imposed against the applicant was deterrent. She added that the applicant has not made any retribution or had any reconciliation with the victim.

5. In a rejoinder, the applicant stated that he regrets what happened. He stated that the complainant died in the year 2003 as a result of an accident and his mother attended her funeral. He stated that his mother died one year after the complainant and that he has done reconciliation with God. He said he was baptized in prison on 30th April 2011 by Seventh Day Adventist Church.

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. His act must have caused mental and physical pain to the victim. I however note that the applicant has taken the period he has served prison positively and learnt skills to improve himself for his own benefit, family and community. He has been of help to remandees and prisoners by offering legal aid. I believe this is a role he can perform besides farming if released from prison. From his demeanor, he appears to have reformed and is likely to be of use to the community and state out of prison. He also appears remorseful and willing to be a law abiding citizen.

8. The applicant stated that he had not started his own family at the time of arrest. He is now 41 years old; I believe he deserves an opportunity to reinvent himself and live a peaceful and meaningful life. I find it appropriate to release the applicant to rejoin the community.

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

Applicant in person

Rita for State