



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

PET. NO.5 OF 2020

PAUL NJENGA KARIUKI.....1ST APPLICANT

ZACHARIA CHUMO CHERUIYOT.....2ND APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. The two applicants herein filed joint application for resentencing. They both challenged constitutionality of sentences imposed against each of them in the Supreme Court decision in the case of **Francis Karioko Muruatetu Vs Republic [2017] eKLR** where they declared mandatory nature of sentence unconstitutional for taking away the discretion of the judicial officer to determine appropriate sentence for each offence depending on circumstances of the case and mitigating circumstances.

2. The 1st applicant stated that he was charged with the offence of **murder** and sentenced to death by the High Court in the year 2003. His appeal to the Court of Appeal was unsuccessful. His sentence was later reduced to serve under presidential pleasure. He said the decision was reached because he was 12 years old at the time, he committed the offence, he said he has been in prison for 20 years now having served 17 years in prison and 3 years in remand.

3. The 1st applicant stated that while in prison he has learnt dress making. He said he has also learnt to live peaceful life without quarrelling with people. He said that the victim was his father who used to disagree with his mother. He said it reached a point when his mother asked him and his siblings to assist her kill their father. He said his father was hit by his brother but he was released by the High Court in the year 2003. He said he was convicted because he said what happened. He said his mother and all his siblings are still alive and are willing to accept him back.

4. In response **Ms. Rita Rotich** for the state opposed the application and urged Court to dismiss it as it was a serious offence. She said the act by the applicant was premeditated and the 1st applicant has not taken accountability of the offence; that he has not shown any remorse but still blames his mother for the offence. She submitted that the offence was meant to deter others from taking the law in their hands. She urged Court to dismiss the application.

5. The 3rd applicant was not able to argue his application as per prison officer present, he was mentally instable.

ANALYSIS AND DETERMINATION

6. I have considered application by the 1st applicant. He is in prison at the president's pleasure. He has served 17 years in prison now and he was in remand for 3 years before sentence. At the time of commission of the offence he was 12 years old. He has stated that he participated in killing the father for mistreating his mother. The mother would have been expected to guide him against harming his father but according to him, she misled her children to kill their father. In my view, the applicant must have been too young to understand the impact of his action.

7. The applicant having been in prison for long, he has used the opportunity for self-reflection and also improve himself by learning the skill of dress making. I am inclined to allow the 1st applicant to rejoin his family and community. I believe he will benefit the community and the country more while out of prison.

8. In respect to the 2nd applicant, I find it appropriate to have social inquiry report by the probation officer before I make determination in respect to his application for resentencing.

9. FINAL ORDERS

1. 1st applicant's sentence is reduced to sentence already served.

2. The 1st applicant to be released unless lawfully held.

3. The probation officer to do social inquiry in respect of 2nd Applicant within 2 weeks from today's date.

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

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RACHEL NGETICH

JUDGE

In the presence of:

Jeniffer - Court Assistant

Applicants in person

Rita for State