



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL MISC. APPLICATION CASE NO. 71 OF 2019

JOHN ODHIAMBO OIRO.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

RULING

The applicant herein JOHN ODHIAMBO OIRO filed a petition herein on 7.2.2019. The petition brought under various constitutional provisions (Articles 21, 163, 258, 25, and 159) basically seeks an order of resentencing. In his submissions in court, he was sentenced to death in 2004 for the offence of murder contrary to section 203 as read with section 204 of the Penal Code. That by presidential order, the said death sentence was commuted to life imprisonment in 2009. His plea was that the court to re-sentence him as to award him a definite period. He pleaded for a second chance adding that he has now reformed and undertaken various vocational courses.

In response to the submissions of the applicant, counsel for the state (Ms. Momanyi), submitted that since the applicant had indicated that he has filed an appeal, he ought to indicate the outcome of the appeal before applying for resentencing so as to avoid the possibility of conflicting orders.

The applicant on the other hand maintained that he does not even have the appeal number.

This court has had the opportunity of perusing through the record and proceedings herein. What comes out is that the applicant filed a Notice of Appeal on 8.10.2004. Same was dated 4.10.2004. Attached to the same is a Memorandum of Appeal, also filed at the High Court on the same date. There is however, no evidence that the said documents were ever lodged at the Court of Appeal. Neither is there any indication of any number allocated to this appeal (Intended appeal) at the Court of Appeal. This finding would give credence to the submissions of the applicant that he has never been issued with an appeal number for his appeal at the Court of Appeal.

If the applicant filed no appeal at the Court of Appeal, as I am convinced, then his present petition for resentencing is properly before this court. He has relied on the decision of the Supreme Court in Francis Karioko Muruatetu and another Versus Republic (Supreme court petition no. 15/2015). Basically, that even in capital offences, one is entitled to mitigation and that death sentence is not mandatory. He pleaded that this court do resentence him to a definite imprisonment term.

It is noted that in the submissions of the applicant, he had the opportunity to do his mitigation. The prosecution, on the other hand had stated they would have no objection to a resentencing herein should it turn out that the applicant had not moved to the Court of Appeal. The applicant has mitigated that he has now reformed and that during the 17 years he has been in prison, he has undergone and learnt various vocational trainings that he would employ if released.

I have considered the said mitigation of the applicant. I have also considered the probation officer's report filed herein on 30.1.2020 pursuant to the orders of this court on 6.11.2019. Material to this plea for resentencing are as follows:-

- i) THAT the applicant has been in prison for 17 years.
- ii) The heinous nature of the crime herein, where 4 people lost their lives.
- iii) The negative attitude of family of the deceased persons.
- iv) The death sentence herein has already been commuted to life imprisonment.

This court is persuaded that it is just and proper to resentence the applicant to a definite term.

Taking into consideration all the factors herein as above, I am convinced that a term of 40 years imprisonment would be appropriate in the

circumstances. I accordingly sentence the applicant to serve 30 years imprisonment. This sentence to run from the date of arraignment in court for plea on 6.1.2004 orders accordingly.

HON. JUSTICE D. OGEMBO OGOLA

30.9.2020

Court
ruling read out in open court in presence of Ms. Gikonyo for state and the appellant/applicant.

HON. JUSTICE D. OGEMBO OGOLA

30.9.2020