



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

HIGH COURT CRIMINAL PETITION NO.6 OF 2019

CONSOLIDATED WITH PETITION NO.22 OF 2019

GEOFFREY KIPKEMOI KEMEI.....1ST PETITIONER

MOSES KIPKORIR TOO.....2ND PETITIONER

- V E R S U S -

REPUBLIC.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The two Petitioners herein:- **GEOFFREY KIPKEMOI KENEI** and **MOSES KIPKORIR TOO** filed this Petition which was consolidated with **PETITION NO.22 OF 2019** seeking review of the death penalty imposed upon the Petitioners for the offence of Murder C/Section 203 as read with Section 204 of the Penal Code Cap.63 Laws of Kenya in **KERICHO CR.CASE NO.7 OF 2003**.

2. The 1st and 2nd Petitioners filed Affidavits in Support of their respective Petitions in which they stated as follows:-

(i) **THAT** they were charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code and sentenced to death.

(ii) **THAT** the death sentence was later commuted to life imprisonment by the President of the Republic of Kenya.

(iii) **THAT** they have exhausted all appeals and they now make this Application under Article 165(b) of the Constitution of Kenya.

(iv) **THAT** they were not accorded a fair trial and that the trial court contravened **Article 50(2)(g)** of the Constitution in sentencing them to death.

(v) **THAT** in the case of **FRANCIS KARIOKO MURUATETU and ANOTHER -VS- REPUBLIC, SUPREME COURT PETITION NO.15816 of 2015** the death penalty was declared unconstitutional and therefore they are seeking for an appropriate sentence.

3. The Court directed the Probation Officer files pre-sentence reports which I have duly considered. The said report for **MOSES KIPKORIR TOO** filed 3rd March 2020 states that he is remorseful for the offence he committed.

4. Further, that he accepts responsibility and pleads for leniency and also that the victim's family and the Petitioner's family have reconciled and are awaiting a cleansing ceremony in case the Petitioner is release.

5. The Report for **GEOFFREY KIPKEMOI KEMEI** also says that he is remorseful and further that the victim's family and the petitioner's family have reconciled and they are awaiting a cleansing ceremony.

6. I have perused the Original Court Record and the two Judgments herein. The Original Judgment found the Petitioners herein **MOSES KIPKORIR TOO** and **GEOFFREY KIPKEMOI KEMEI** and **CHARLES KIPKOECH KORIR** (deceased) who died in custody guilty of murder and sentenced them to death.

7. The conviction and the death penalty were upheld by the Court of Appeal. The three raped ACB and she died as a result of injuries sustained during the ordeal.

8. I find that the sentence meted against the three has since been commuted to life imprisonment.

9. I find that the sentence is well deserved in view of the gory crime committed by the three together with **CHARLES KIPKOECH KORIR** who has since died.

10. I find that the petition herein lacks in merit and I accordingly dismiss it.

11. The death penalty has since been commuted to life imprisonment and I find that the same is well merited in view of the crime committed by the Petitioners and their co-accused who has since died in custody.

Dated, Delivered and Signed this 24 Day of September 2020

A.N. ONGERI

JUDGE

7/9/2020