



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

PETITION NO. 171 OF 2018

JOHN KIRUNJI M' RIMBERI.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGMENT

1. The applicant herein faced trial for the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence were that on 15th December 2000 at Ukuru Sub-location, Kaubuo Village in Meru Central District within the Eastern Province, he murdered **Kenneth Gikunda Nkoroi**.
2. The applicant was found guilty of the offence and was sentenced to death on 26/4/2007. He appealed against the conviction and sentence at the Court of Appeal in Nyeri Criminal Appeal No. 46 of 2007. The Court of appeal (Nambuye, Kiage, Sichale JJA.) agreed with the trial court on both conviction and sentence and dismissing the appeal in its totality.
3. The applicant has now applied for resentencing on the basis of the decision by the Supreme Court in the **Consolidated petition No. 15 and 16 of 2015 Francis Karioko Muruatetu & Another versus Republic**.
4. On 23/6/2020 the court directed the Respondent to file its submissions within 3 days but none had been filed at the time of writing this judgment.
5. In resentencing, the manner the offence was committed is relevant. Accordingly, but for that limited purpose, I will recite the chain of events in the case he faced, to wit; on 9/12/2000 four men including the applicant approached Muthuri (pw3) and Mutembe (PW4) claiming to be responsible for the deceased circumcision. They demanded Kshs 4,000/= from Pw3 and Pw4. That on 15/12/2000 the applicant who had a panga entered the room, placed his panga at the entrance and immediately sat at the deceased's legs; the deceased was then seated on the floor. He pressed a stick, which he had removed from the room, against the deceased neck and head butted him. The applicant then proceeded to kick the deceased on his chest several times. When Muthaura asked him what he was doing, the appellant told him he would also come for him, and he left. Mwaki also witnessed the assault on the deceased.
6. The post-mortem report revealed that the deceased died as a result of bleeding in the chest cavity due to chest injury.
7. The court of appeal agreeing with the trial court's decision concluded that the applicant was aware that there was a real risk that his assault on the deceased could result to grievous harm or lead to his death.
8. In **Francis Karioko Muruatetu & Another versus Republic** (*supra*) the Supreme Court of Kenya held that the mandatory nature of the death sentence under Section 204 of the Penal Code was unconstitutional as it denied the Court its discretion in sentencing. The Court then set the stage for resentencing in similar cases, but did not leave us without guidance; it provided some of the relevant considerations in resentencing to wit; *age of the offender, being a first offender, whether the offender pleaded guilty, the character and record of the offender, commission of the offence in response to gender-based violence, remorsefulness of the offender, the possibility of reform and social re-adaptation of the offender and any other factor that the Court considers relevant*.
9. The applicant averred that he has been incarcerated for the last 20 years (beginning from the date of his arrest) and during which time he has rehabilitated and he is now ready to contribute to the Nation's development. In mitigation it was his averment that he is a first time offender, he is remorseful and the commission of the offence was a misguided act.
10. Death sentence is so final that it leaves no room for rehabilitation of the offender. Yet, from the record, the applicant deserves rehabilitation in order to make him a productive member of the society. He has already suffered incarceration for 20 years. In light thereof, and after taking into consideration the nature of, and manner the offence was committed, I set aside the death sentence and sentence him to

25 years' imprisonment. The sentence runs from the day he was first arraigned in court for the offence. It is so ordered.

Dated, signed and delivered at Meru this 22nd day of September 2020.

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F. GIKONYO

JUDGE

Petitioner – present

Maina for state.