



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT MALINDI

PETITION NO. 22 OF 2019

ABDALLAH HASSAN HIYESA.....PETITIONER

VERSUS

REPUBLIC..... RESPONDENT

Coram: Hon. Justice R. Nyakundi

Petitioner in person

Mr. Alenga for the state

RE-SENTENCING

The petitioner was charged, convicted and sentenced to serve 30 years imprisonment for the offence of manslaughter contrary to Section 202 as read with section 205 of the Penal Code. In addition, he was also sentenced to a year imprisonment for having committed the offence of assault causing actual bodily harm contrary to Section 251 of the same code. The aforementioned sentences were to run concurrently. He was dissatisfied with the conviction and sentence of the manslaughter charge and lodged an appeal at the High Court where the appeal against conviction was dismissed, but the sentence was partially allowed and reduced from the 30 years imprisonment to serve 15 years imprisonment. He then moved to the Court of Appeal challenging both his conviction and sentence and the same was dismissed for the lack of merit.

The instant petition for re-sentencing has been necessitated by the Supreme Court decision in **Francis Karioko Muruatetu & Another –Vs- Republic Petition No. 15 of 2015 (2017) eKLR** whereby the mandatory death sentence for the offence of murder was declared unconstitutional. As a corollary, in the case of **William Okungu Kittiny –Vs- Republic Kisumu Criminal Appeal No. 56 of 2013 (2018) eKLR**, the Court of Appeal applied the **Muruatetu Decision Mutatis Mutandis** to the provisions of Section 296 (2) of the Penal Code which imposes a mandatory death penalty for the offence of robbery with violence.

The facts of the case laid against the appellant were that the petitioner, on the 27th day of February 2012 at Hurara village in Tana Delta District within Tana River County, inflicted grievous bodily harm to **Hassan Iyasa Abdalla** which later occasioned the death of the deceased. The petitioner is seeking that the 15 years' sentence meted out on him be set aside and for the court to impose an appropriate sentence.

In sentencing an offender, the sentence meted out on an accused person must commensurate to the moral blameworthiness of the offender and that the court should look at the facts and the circumstances of the case in its entirety before settling for any given sentence. (**See Ambani Vs Republic**). The Court of Appeal **Thomas Mwambu Wenyi Vs Republic (2017) eKLR** cited the decision of the Supreme Court of India in **Alister Anthony Pereira Vs State of Maharashtra** at paragraph 70-71 where the court held the following on sentencing: -

“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”

In **Francis Karioko Muruatetu & Another –Vs- Republic (Supra)** the Supreme Court stated the following guidelines as mitigating factors in a re-hearing sentence for the conviction of a murder charge:-

- (a) *age of the offender;*
- (b) *being a first offender;*
- (c) *whether the offender pleaded guilty;*
- (d) *character and record of the offender;*
- (e) *commission of the offence in response to gender-based violence;*
- (f) *remorsefulness of the offender;*
- (g) *the possibility of reform and social re-adaptation of the offender and*
- (h) *any other factor that the court considers relevant.*

These factors are also applicable in a re-sentencing for the offence of robbery with violence. The Judiciary Sentencing Policy Guidelines lists the objectives of sentencing at page 15 paragraph 4.1 as follows:

1. ***Retribution: To punish the offender for his/her criminal conduct in a just manner.***
2. ***Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.***
3. ***Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.***
4. ***Restorative Justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims, communities' and offenders' needs and justice demand that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.***
5. ***Community protection: To protect the community by incapacitating the offender.***
6. ***Denunciation: To communicate the community's condemnation of the criminal conduct.***

In mitigation, he is a first offender hence he deserves to benefit from the least severe of prescribed punishment for the offence of manslaughter. He spent two years in remand custody awaiting conclusion of his trial and he claims to have maintained a high degree of discipline and generosity during the years he has been serving his sentence. He also added that he has achieved a vocational training certificate in Islamic studies which goes to show his preparedness to rejoin the society. Also, in mitigation, there was clear evidence of a long-standing family feud and his family members also sustained some injuries during the fight.

In aggravation, the petitioner used a dangerous weapon namely a knife which he employed to stab the deceased. He was said to have appeared to be an unforgiving person who tenaciously holds on to grudges. I shall not be escaped by the fact that life of the deceased was needlessly lost. There are many legal dispute resolution avenues readily available for people who appear to have disagreements rather than resorting to violence. The felony of manslaughter is punishable by the maximum sentence of life imprisonment under section 205 of the Penal Code Act. Nevertheless, this embodies the maximum punishment which is usually reserved for the worst of such cases. The instant case cannot be said to be a case falling within the ambit of the most extreme cases of manslaughter. I have for the foregoing reason discounted life imprisonment.

I therefore find no reason to disturb the 15 years' jail term imposed upon the petitioner by the High Court at Malindi. The sentence shall be effective from the date of arrest.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 23RD DAY OF OCTOBER 2020

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R. NYAKUNDI

JUDGE

In the presence of

1. Mr. Alenga for the state
2. The petitioner