



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**CRIMINAL PETITION CASE NO.17 OF 2018**

**DANIEL KIPKURUI KOECH.....PETITIONER**

**- V E R S U S -**

**REPUBLIC.....RESPONDENT**

**RULING ON SENTENCE RE-HEARING**

1. The Petitioner was sentenced to death for the offence of murder contrary to section 203 as read with section 204 of the Penal Code which sentence was commuted to life imprisonment by the President.
2. The particulars of the charge were that on 1/9/2002 at Masomborik Village, Kapseger Location in Kericho District of Rift Valley Province, the Petitioner murdered DAVID KIPYEGON KOECH.
3. The Prosecution evidence is that the Petitioner attacked the deceased over a debt of Kshs.100/= and inflicted serious injuries and the deceased who succumbed to the injuries on the way to hospital.
4. The Petitioner denied in his defence that he killed the deceased and said the deceased was attacked by the people who were drinking busaa with him. The Petitioner said he had given the deceased Kshs.100/= as his contribution towards the purchase of the busaa but when the people poured the drink he ran away.
5. The Petitioner was found guilty as charged and sentenced to death and the death penalty has been commuted to life imprisonment.
6. The Petitioner appealed against conviction and sentence to the Court of Appeal and his appeal was dismissed and both the conviction and sentence were upheld.
7. He has now Petitioned this Court for sentence rehearing following the Supreme Court decision in the case **of Francis Karioko Muruatetu & another v Republic [2017]eKLR**.
8. The issues for determination in the **Francis Karioko Muruatetu** case were as follows;
  - a) **Whether the mandatory nature of the death penalty provided for in the Penal Code under section 204 is unconstitutional?**
  - b) **Whether the indeterminate life sentence should be declared unconstitutional?**
  - c) **Whether this Court can or should define the parameters of a life sentence; and**
  - d) **What remedies, if any, accrue to the petitioners?"**
9. The Supreme Court held in the said case as follows;

**"[112] accordingly, with regards to the claims of the petitioners in this case, the Court makes the following Orders:**

- a) **The mandatory nature of the death sentence as provided for under Section 204 of the Penal Code is hereby declared unconstitutional. For the avoidance of doubt, this order does not disturb the validity of the death sentence as contemplated under Article 26(3) of the Constitution.**

**b) This matter is hereby remitted to the High Court for re- hearing on sentence only, on a priority basis, and in conformity with this judgment.**

**c) The Attorney General, the Director of Public Prosecutions and other relevant agencies shall prepare a detailed professional review in the context of this Judgment and Order made with a view to setting up a framework to deal with sentence re-hearing cases similar to that of the petitioners herein. The Attorney General is hereby granted twelve (12) months from the date of this Judgment to give a progress report to this Court on the same.**

**d) We direct that this Judgment be placed before the Speakers of the National Assembly and the Senate, the Attorney-General, and the Kenya Law Reform Commission, attended with a signal of the utmost urgency, for any necessary amendments, formulation and enactment of statute law, to give effect to this judgment on the mandatory nature of the death sentence and the parameters of what ought to constitute life imprisonment.”**

10. I find that the death penalty was declared unconstitutional by the Supreme Court and the Petitioner has a right to re- hearing on sentence only.

11. The Petitioner filed submissions in the form of Mitigation in which he stated that he is remorseful and he promises to be a law abiding citizen.

12. The Petitioner also submitted that he has been in custody for 17 years and he has reformed and he has acquired skills in salesmanship, store keeping and C.P.A. Section 6 (k) through Strathmore University.

13. The Petitioner also stated that he has undertaken Theological Courses offered in Prison through various sponsors including a Higher Diploma in Theology and a Diploma in Psychological Counselling.

14. The Probation Officer filed a Pre-Sentence Report on 29/9/2020 in which he stated that the family of the deceased and that of the Petitioner have reconciled through the efforts of the assistant Chief Chepcholiet Sub-Location and a cleansing and compensation has been done whereby the deceased's family was compensated 9 Cows by the Petitioner's family and now the two families live harmoniously.

15. The Petitioner has been in custody since 25/2/2005 when Judgment was passed. He was first arraigned in Court on 27/5/2003 and he has been in custody since that time making the total period of incarceration 17 years.

16. The Petitioner is sentenced to seventeen (17) years imprisonment for murder contrary to section 203 as read with section 204 of the Penal Code.

17. Since the Petitioner has been in custody for 17 years since he was arrested, I direct that the Petitioner be set free unless lawfully held for any other reason.

**Delivered, signed and dated at Kericho this 23<sup>RD</sup> day of October 2020.**

**A. N. ONGERI**

**JUDGE**