

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL PETITION NO. 3 OF 2018

JOHN BOSCO NJUE NDWIGA.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Petitioner was charged with the offence of robbery with violence Contrary to Section 296(2) of the Penal Code convicted and sentenced to death which sentence was later commuted to life imprisonment.

All his appeals to the High Court and Court of Appeal were dismissed for lack of merit. HCRA No. 191/2013 was dismissed on the 14/7/2014 and Court of Appeal No. 78 of 2014 dismissed on the 7/6/2017 thus exhausting the appellate process.

By a petition filed on the 4/5/2018, the Petitioner petitioned for resentencing and urged for reduction of the sentence. He further filed mitigating submissions on the 8/7/2020. Pursuant to the Supreme Court Petitions No. 15 and 16 of 2015 Francis Karioko Muruatetu –v- Republic (2017) @ KLR wherein the highest court in the Country held that the mandatory death sentence was unconstitutional as it denies an accused person the right to a fair and absolute right under Article 25 (c) of the Constitution and inhibited the exercise of judicial discretion during sentencing.

I have considered the mitigation factors as filed. The Petitioner exhibits remorsefulness for the offence he committed and seeks for forgiveness from the victim's family whose life was lost during the robbery.

It is a further submission that in the 10 years imprisonment period, he has learnt useful trades through vocational trainings (certificates attached and seen). He was a first offender.

At date of commission of the offence, he was only 24 years old, and now 34. He prays to be given a second chance in life.

The Learned Assistant Prosecution Counsel Mr. Ashimosi by his submissions while conceding to reduction of the sentence, submits that a life was lost during the robbery and therefore being a serious offence, the court may consider reduction to 25 years, upon taking into account that the petitioners Co-accused, Charles Maina Gitonga was on the 30/7/2020 resentenced to 25 years Imprisonment by the court in High Court Petition No. 10 of 2019 (Gitari J).

Dated, Signed and Delivered at Kerugoya this 26th day of November, 2020.

J. N. MULWA

JUDGE