



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE- J.)

PETITION NO. 04 OF 2019

BETWEEN

GORDON OKUMU OLUOCH.....PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGMENT

1. **GORDON OKUMU OLUOCH**, (hereinafter referred to as the petitioner) was convicted and sentenced to death for the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code** in **Kisumu High Court Criminal Case No. 31 of 2008**. He lodged an appeal in **Kisumu Criminal Appeal No.17 of 2014** which was dismissed and the conviction and sentence were upheld.

2. By a petition filed on 09th January, 2019, the petitioner has petitioned this court for resentencing. He filed 2 certificates to demonstrate that he had undertaken studies in Bible Study.

3. Mr. Muia, learned counsel for the state while conceding that the Petitioner was entitled to resentence submitted that the offence was committed in the most heinous which involved the cutting of the victim to death and urged the court to direct that the petitioner served 9 from date of sentence.

Analysis and Determination

4. At the time of the petitioner's conviction, death was the only available sentence for murder.

5. The Supreme Court decision in ***Francis Kariuki Muruatetu & Another v Republic & 5 others [2016] eKLR*** declaring the mandatory death sentence unconstitutional has necessitated resentencing of all persons previously sentenced to the mandatory death sentence.

6. I have considered ***The Sentencing Policy Guidelines, 2016*** and its application which is intended to promote transparency, consistency and fairness in sentencing (See ***Michael Kathewa Laichena & another v Republic [2018] eKLR***).

7. The facts from the record shows that the attack on the deceased by the Petitioner was unprovoked and intentional.

8. Under the proviso to **section 333(2)** of the ***Criminal Procedure Code (Chapter 75 of the Laws of Kenya)***, the court is entitled to take into account the period the petitioner has spent in custody in determining the sentence. The court record shows that the petitioner has served about 6 years since the date of conviction.

9. After considering all the mitigating and aggravating factors, and the fact that the Petitioner has undertaken 2b bible study courses as a way of reformation, I re-sentence him to **30 years** imprisonment from date of conviction.

10. For avoidance of doubt, the Petitioner's sentence having been commuted to a definite imprisonment term is also entitled to benefit from remission of sentence **if he meets the conditions**. It is so ordered.

DATED AND SIGNED IN KISUMU THIS 20th DAY OF June 2019

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant -

Petitioner -

For the State -