



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF AT ELDORET**

**CRIMINAL PETITION NO 24 OF 2019**

**BEN PKIECH LOYATUM.....PETITIONER**

**AND**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The petitioner (**BEN PKIECH LOYATUM**) is a convict, currently condemned to death for the offence of murder contrary to **section 203 of the Penal Code, as read with section 204** of the same. The offence occurred on 1<sup>st</sup> January 2008 at **KAPTIMOR** village within **KABARNET** division of **BARINGO** County. The victim was **ROBERT BAGWASI ONSARIGO** who worked as the manager of **RIFT VALLEY AGENCIES** who was shot dead by the petitioner.

2. The petitioner was a police officer who had been issued with a gun plus 60 rounds of ammunition from the armoury by **SGT AMOS KIPRONO KIPTUI** on **31/12/2007**. The petitioner proceeded on patrol duties. The petitioner later called to say he had shot and killed someone. Upon being arrested and being disarmed, only 44 rounds of ammunition were recovered from him.

3. **RAEL KIPKOSGEL, (PW3)** a neighbour heard gunshots from the accused's house, and upon inquiring, the petitioner told her that someone had knocked at his door...it turned out that the person was the deceased. The petitioner got out in a rage, complaining that the person who knocked at his door never identified themselves. He shot the deceased through the chest, the bullets punctured the heart and the lungs.

The cause of death was internal haemorrhage due to gunshot wounds. A shattered bullet head was retrieved from the deceased's chest.

4. The petitioner's unsworn defence was that someone knocked at his door, and when he asked who it was, the response he got was "**fungua mlago haraka**". After asking the same question thrice, and getting the same rude answer, he perceived that his own life was in danger. He therefore moved to a hidden corner, and cocked his gun. He heard movements near his door and under his window, he opened fire. This incident occurred during the post-election violence period that rocked many parts of the country, and witnesses did confirm that during that period, there frequent spates of violence in the area. The petitioner regrets that he over-reacted, and seeks forgiveness from the family of the deceased as well as the community.

5. He now urges this court to consider reviewing his sentence as he spent 2 years and 10 months in remand, and has spent 9 years imprisonment.

6. The petitioner was arrested on 1/1/2008 and convicted and sentenced to death on 27/10/2010, which sentence was later commuted to life. He has exhausted all avenues of appeal. He states in the supporting affidavit that he is now a reformed Christian who is a member of Eldoret Prison church. His changed life has seen him elevated to the position of a Trustee in the prison.

7. The court is urged to be guided by the Supreme Court decision in **FRANCIS KARIOKO MURUATETU AND ANOR VERSUS REPUBLIC (PETITION NO 15 OF 2015)**, which examined the purpose which a sentence meted out is intended to serve. The objectives of sentencing include:

- a) To punish the offender for his misdeeds (retribution)
- b) Communicate a community's condemnation and denunciation of the criminal conduct
- c) Rehabilitation of the offender, as well as protection of citizen

8. The circumstances under which the incident took place are quite clear, and I think taking into account the pre-trial period of incarceration of 2 years and 10 months, then it means he has been incarcerated for **11 years and 10 months (just 2 months shy of making it 12 years)**. This period of confinement has served to punish the offender for his mis-deeds (retribution) as well as to communicate a community's condemnation and denunciation of the criminal conduct. He has also had a long time to reflect of his life and his fate.

9. Indeed, although the petitioner's death sentence was commuted to life, I share the view expressed in the **Muruatetu** (supra) decision, that it is necessary to have a legal definition of what constitutes a life sentence. In my view, the petitioner has more than paid the price for his actions, and he deserves a remedy in the form of resentencing, and in the spirit of what the Supreme Court of Kenya I hold that the sum total of **11 years and 10 months** spent in prison (both remand and as a convict are adequate punishment. I am persuaded that the life sentence is not ideal and the same is set aside and substituted with **11 years and 10 months, which runs from the date of conviction**. This therefore means that the petitioner has served **the sentence and shall be set at liberty forthwith unless otherwise lawfully held**.

**DELIVERED, SIGNED AND DATED THIS 15<sup>TH</sup> DAY OF AUGUST 2019 AT ELDORET**

**H. A. OMONDI**

**JUDGE**