



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL & HUMAN RIGHTS DIVISION

PETITION NO. 102 OF 2018

(Originating from Criminal Case No. 5 of 1998 in the High Court at Mombasa and Criminal Appeal No. 88 of 2003 in the Court of Appeal at Mombasa)

DAVID NJUGUNA KIIRUPETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGMENT

1. The petitioner together with another person were convicted for murder contrary to section 203 as read with section 204 of the Penal Code. He was sentenced to death. He lost appeal on the conviction and sentence and has served jail term for 22 years. The petitioner is now in this court for resentencing pursuant to the Supreme court decision in *Francis Karioka Muratetu and Another vs. Republic [2017] eKLR* in which the apex court declared mandatory death sentence unconstitutional.
2. The circumstances giving rise to conviction were that the petitioner together with another killed the deceased, Ingerborg Escoffey Wiesner, who at that time lived together with the petitioner's co-accused one John Ndegwa Njuguna. It appeared that the intention of the murder was to take away the deceased's Nissan Matatu KAD 313X which the deceased had bought for Ksh 350,000. The said John Ndegwa Njuguna was living together with the deceased as wife or girlfriend in Ukunda.
3. The petitioner herein was roped along to help in the said murder.
4. The prosecution submitted that the petitioner be jailed for forty years as the murder was gruesome and was carried out in a most painful way using a vehicle break disk to cut the deceased's throat.
5. On his part the petitioner submitted that he carried out the murder under the influence of alcohol, and that he had just visited his friend John Ndegwa Njuguna who involved him in the murder.
6. The petitioner avers that he regrets his action, but that he cannot recall time. He pleads that he has reformed and seeks the mercy of this court.
7. The petitioner was 22 years at the time he committed the offence. He is now 44 years and says that he has learnt professional trade in prison and will be useful in the free society and pleads to be sentenced for the 22 years he has served.
8. I have considered the submissions of the parties. In my view the purpose of sentencing must be observed in every sentence meted out. These include whether there is retribution, rehabilitation or reformation. The petitioner may have been rehabilitated and even reformed during the 22 years he has done in jail. However, I am not satisfied that in terms of retribution he has atoned for the death of an innocent lady. The interest of the victim must always be taken into account by the court. It so happens in many cases that the court is the only entity that can ensure justice for the victim who is not alive.
9. In the circumstances of this case I am satisfied that the petitioner should be jailed for a term which sends out a clear message to the would be murderers that crime does not pay.
10. From the record there is not much mitigating circumstances in favour of the petitioner. It is not indicated what he has learnt while in prison, or how he will settle in a free society. However, I have had a chance to write a Judgment for his co-accused John Njuguna Ndegwa, who has demonstrated ability to change and reform society. Since his co-accused has received credit for his reformation, the petitioner herein may also benefit from that. It is for that reason that the petitioner is hereby jailed for 27 years.

