



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

CRIMINAL PETITION NO. 39 OF 2019

BETWEEN

JOSEPH OGUTU.....PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGEMENT

Introduction

1. On 11th April, 2012, the trial court in **KISUMU CRIMINAL CASE NO.498 OF 2011**, convicted and sentenced the Petitioner to 15 years for robbery with violence contrary to section 296(2) of the Penal Code. Petitioner lodged an appeal **KISUMU HIGH COURT CRIMINAL APPEAL NO. 50 OF 2012** which was dismissed on 10th December, 2013 and the sentence substituted with a death penalty. The Petitioner subsequently appealed to the Court of Appeal in **KISUMU CRIMINAL APPEAL NO. 11 OF 2014** which similarly upheld his conviction and death sentence by a judgment dated 12th February, 2016.

2. The Petitioner has petitioned this court for resentencing. He stated that he had been sick and had not undertaken any training for the time that he was in custody.

3. Ms. Gathu, Senior Prosecution Counsel for the state submitted that the offence was heinous and complainant was wounded during the robbery.

Analysis and Determination

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

5. The Supreme Court's 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. 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 7 years and 9 months since the date of conviction.

8. The complainant was robbed and wounded. The Petitioner has not undertaken any studies as a way of reformation. His allegation that he had been sick was refuted by a medical report dated 21.11.19 from Kisumu Maximum Prison's clinical officer who stated that the Petitioner was treated for TB in 2010 but had recovered.

9. Petitioner is a first offender and has been served 7 years. I re-sentence him to **20 years'** imprisonment from **11th April, 2012** when he was convicted.

DELIVERED AND SIGNED IN KISUMU THIS 28TH DAY OF NOVEMBER 2019

T. W. CHERERE

JUDGE

In the presence of-

Court Assistant - Okodoi

Petitioner - Present in person

For the State - Ms. Gathu