



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**CONSTITUTIONAL PETITION NO. 17 OF 2019**

**CHRISTOPHER OTIENO AMOLLO.....PETITIONER**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(Being an Application seeking Resentencing in Kisumu CA Cr. Appeal No. 452 of 2007; Kisumu HCCRA No. 84 of 2016 dated 13.11.2007: from Original Criminal Case No. 1231 of 2005 at Principal Magistrate's court, Siaya delivered on 31.5.2006 by Hon. G.K. Mwaure, Principal Magistrate)***

**JUDGMENT**

1. The Petitioner Christopher Otiemo Omollo filed this Petition on 4.4.2019 seeking orders for resentencing on account that the death penalty imposed on him by the trial court in Siaya PM Cr. Case No. 1231/2005 upon conviction for the offence of Robbery with Violence on 31/5/2006 was unconstitutional.
2. The Petitioner relies on the **Francis Karioko Muruatetu V Republic Supreme Court Petition No. 15 & 16/2015** wherein the apex Supreme court declared that the mandatory death sentence was unconstitutional as it denied the convicted person an opportunity to mitigate before being sentenced and that the said legal provision deprived the trial court of the judicial discretion to mete out appropriate sentence having regard to the mitigations and circumstances of each case.
3. The delay in the disposal of this petition was because this court had to call for the trial court record which had been send to the public archives hence the file had to be retrieved through a process as the Petitioner had filed an appeal all the way to the Court of Appeal.
4. After being convicted and sentencing by the trial court, the Petitioner filed a first appeal to the High Court vide Kisumu HC CRA No. 84/2016 which was dismissed on 13/11/2007 by Hons. J. W. Mwera and M. G. Mugo JJ.
5. Thereafter, the Petitioner sought refuge before the Court of Appeal vide CA Cr. Appeal No. 452/2007 which appeal was also dismissed.
6. The offence was committed on 1/12/2005 against Benter Atieno Gombe who sustained cut wound injuries classified as harm. The assailants were armed with pangas and iron bars. The complainant was robbed of her shaving machine and Kshs. 3,000/= all valued at Kshs. 6,000/=.
7. In his oral submissions, the Petitioner prayed for a custodial sentence because he was condemned to suffer death which sentence was commuted to life imprisonment by His Excellency the President. He submitted that he has been in prison for 15 years.
8. He readily admits committing the offence of robbery with violence but blames it on bad company. That he was 23 years then and is now 39 years old. He submitted that he has learnt life's skills in prison and can work and be useful to the community. He has trained in mechanics. He produced certificate showing he is qualified in Grade II Mechanics from Naivasha Prisons in August 2016.
9. Mr. David Okachi Senior Principal Prosecution Counsel in response submitted that the Petitioner has learnt lessons in prison that he can be a good ambassador to others.
10. I have considered the mitigation and submissions by the Petitioner, in support of his petition for resentencing.
11. The Petitioner was a 23 year old lad when he committed the offence that has seen him languish in prison for close to 15 years as he was arrested on 12/12/2005.
12. While in prison, he has learnt Motor Vehicle Mechanics although he could have learnt more, being a young energetic man. He is almost 40 years now. His life has been wasted because of bad company and the failure to respect other people's property. He now regrets the

offence and now that he was exhausted all appeals channels, he readily admits his mistake. I have considered the fact that robbery with violence is a traumatizing offence to its victims who, often times, lose their lives or limbs or are left in a vegetative state.

13. A person who is armed with pangas and iron bars is one who is ready to kill. The complainant was lucky to survive the ordeal. The Petitioner was armed and accompanied by another person and they cut the victim with a panga on her shoulder as confirmed by the Clinical Officer who treated the victim. Some of the stolen goods dropped as the robbers escaped.

14. Albeit the Petitioner has been in person for 15 years, he has only learnt motor vehicle mechanics. I am not satisfied that he is fully prepared to be reintegrated into society. He has escaped death sentence. He is serving life in prison.

15. Having regard to the circumstances under which the offence was committed, I would exercise discretion and set aside the death sentence imposed and substitute it with 30 years in prison to be calculated from the date of arrest on 12/12/2005. To that extent, the Petition for resentencing succeeds.

16. Order accordingly.

**Dated, signed and Delivered at Siaya this 26<sup>th</sup> day of November 2019**

**R.E. ABURILI**

**JUDGE**