



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

CRIMINAL PETITION NO. 40 OF 2019

BETWEEN

FREDRICK AMBANI NATILI.....PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGEMENT

Introduction

1. On 18th September, 2003, the trial court in **KISUMU CRIMINAL CASE NO.413 OF 2003**, convicted and sentenced the Petitioner to death for one count of robbery with violence contrary to section 296(2) of the Penal Code and to 5 years' imprisonment on one count of rape contrary to section 140 of the Penal Code. Petitioner lodged an appeal **KISUMU HIGH COURT CRIMINAL APPEAL NO. 428 OF 2003** which was dismissed on 21st September, 2006 and the sentence in the offence of rape was held in abeyance in the light of the death sentence. whereupon the conviction and sentences were upheld. The Petitioner subsequently appealed to the Court of Appeal in **KISUMU CRIMINAL APPEAL NO. 311 OF 2009** which similarly upheld his conviction and sentence by a judgment dated 11th July, 2014.

2. By a petition filed on 09th July, 2019, the Petitioner has petitioned this court for resentencing.

3. Ms. Gathu, learned counsel for the state submitted that the petition was not opposed and proposed that the Petitioner be sentenced to an imprisonment term of 30 years from date of conviction for the reason that the Petitioner and another not only robbed the victim but also raped her.

Analysis and Determination

4. At the time of the petitioner's conviction, death was the only available sentence for robbery with violence and imprisonment for a term of not less than fifteen years but which may be enhanced to imprisonment for life for the offence of rape.

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 13 years since the date of conviction.

8. The Petitioner not only raped the complainant but also raped her. The Petitioner has undertaken Bible Studies and has obtained various certificates as a way of reformation After considering all the mitigating and aggravating factors, and the fact that the Petitioner is a first offender, I re-sentence him to **20 years'** imprisonment for the count of robbery with violence contrary to section 296(2) of the Penal Code from date of conviction on 18th September, 2003. The 5 years' sentence on the count of rape contrary to section 140 of the Penal Code shall run concurrently with the 25 years' sentence from 18th September, 2003.

DELIVERED AND SIGNED IN KISUMU THIS 21st DAY OF November, 2019

T. W. CHERERE

JUDGE

In the presence of-

Court Assistant - Amondi/Okodoi

Petitioner - Present in person

For the State - Ms. Gathu