



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 137 OF 2018

**IN THE MATTER OF: THE CONSTITUTION OF KENYA 2010 (SUPERVISORY
JURISDICTION AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOM
OF AN INDIVIDUAL) HIGH COURT PRACTICE AND PROCEDURE RULES 2013**

AND

IN THE MATTER OF: ARTICLE 22(1) OF THE CONSTITUTION

AND

**IN THE MATTER OF: ARTICLES 19, 20, 21, 22, 23, 24, 25, 27,
28, 48, 50, 258 AND 259 OF THE CONSTITUTION**

BETWEEN

ANDREW NJERU MAKUNYI.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT

1. The Petitioner herein seeks a resentencing pursuant to the Supreme Court decision in **Francis Karioko Muruatetu vs. Republic [2017] eKLR**.
2. The Petitioner was tried and convicted of the offence of Murder in Mombasa High Court Criminal Case No. 31 of 2007 and sentenced to death which sentence was later reduced to life imprisonment. He has been in prison for 17 years after exhausting their Appeal processes. The Petitioner unprovoked restrained the deceased while his accomplice drove a knife into the deceased's gut leaving him for dead.
3. **Mr. Fedha** for the prosecution prays for a definite sentence of 40 years including the 17 years served due to the circumstances of the charge.
4. The Petitioner submits that he has made efforts to reconcile with himself, he has obtained a diploma in bible studies and he offers spiritual nourishment to inmate and he is also a motivational speaker. He further submitted that the 17 years served is adequate punishment and he prayed for a maximum sentence of 20 years.
5. I have carefully considered the issue at hand. Under the proviso to **section 333(2)** of the **Criminal Procedure Code (Chapter 75 of the Laws of Kenya)**, this Court is entitled to take into account the period the petitioner has spent in custody in determining the sentence. I have noted that the Petitioner has been in custody for approximately 19 years since his arrest. The aim of punishment is **community protection, deterrence, retribution, rehabilitation, restorative Justice and reformation**.

6. This Court has considered judgments of Superior Courts that are intended to ensure consistency and fairness. In the Court of Appeal case of **John Ndede Ochodho Alias Obago vs. Republic KSM CA Criminal Appeal 120 of 2014(2018) eKLR** the Court upheld a sentence of 30 years in a case of murder where the appellants assaulted the deceased several times causing his death.

7. In view of the fact that the murder is a very serious offence which involves loss of life. There is no dispute that the life he illegally took cannot be compensated. I have arrived at the decision that the Petitioner should appropriately be punished for his crime. Murder must be properly punished to send a clear warning to the would be murderers that they would be severely punished.

8. I now hereby set aside the death sentence imposed on the Petitioner and substitute the same with a jail term of thirty (30) years from the date of arrest.

Right of Appeal in 14 days.

That is the Judgment of the Court.

Dated, Signed and Delivered at Mombasa this 19th day of December 2019.

E. K. OGOLA

JUDGE

In the presence of:

Mr. Fedha for DPP

Petitioner in person

Mr. Kaunda Court Assistant