



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

CRIMINAL PETITION NO. 31 OF 2019

BETWEEN

LAWRENCE AYUB MAINA alias Kiki.....PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGEMENT

Introduction

1. On 13th April, 2006, the trial court in **KISUMU CRIMINAL CASE NO. 328 OF 2005**, convicted and sentenced the Petitioner to death for the offence of robbery with violence contrary to section 296(2) of the Penal Code. Petitioner lodged an appeal **KISUMU HIGH COURT CRIMINAL APPEAL NO. 45 of 2006** which was dismissed by a judgment dated 23rd September, 2008. The Petitioner subsequently appealed to the Court of Appeal in **KISUMU CRIMINAL APPEAL NO. 648 OF 2010** which similarly upheld his conviction and death sentence by a judgment dated 28th November, 2012.

2. The Petitioner has petitioned this court for resentencing. He expressed remorse and stated that he was arrested in 2006 at the age of 27 years and had been in custody since then having served 13 years since conviction.

3. Ms. Gathu, Senior Prosecution Counsel for the state submitted that the offence was committed in a series of other robberies by the Appellant and others who would dress up as police officers and terrorize victims whom they would rob and assault using crude weapons such as pangas, rungas and metal bars. While appreciating that the petitioner was arrested at the age of 27 years, the state recommended that he be resented to 30 years.

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.

8. The complainant was robbed and he suffered cut wound on the upper lip.

9. Petitioner was a first offender. The court record shows that the petitioner has served 13 years and 8 months since the date of conviction.

He is re-sentenced to **15 years'** imprisonment from **13th April, 2006** when he was convicted.

DELIVERED AND SIGNED IN KISUMU THIS 18th DAY OF December 2019

T. W. CHERERE

JUDGE

In the presence of-

Court Assistant

- **Amondi/Okodoi**

Petitioner

- **Present in person**

For the State - Ms. Gathu