



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

(CORAM: CHERERE-J)

CRIMINAL PETITION NO. 60 OF 2019

BETWEEN

PATRICK MMACHI TETE alias ODABA.....PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGEMENT

Introduction

1. On 11th May, 2005, the trial court in **KISUMU CRIMINAL CASE NO.815 OF 2004**, 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. 104 of 2005** which was dismissed by a judgment dated 13th May, 2008. The Petitioner subsequently appealed to the Court of Appeal in **KISUMU CRIMINAL APPEAL NO. 284 OF 2009** which similarly upheld his conviction and death sentence by a judgment dated 17th December, 2010.

2. The Petitioner has petitioned this court for resentencing. He expressed remorse and stated that he was arrested on 01st August, 2004 and has been in custody since then.

3. Ms. Gathu, Senior Prosecution Counsel for the state submitted that the offence was heinous and complainant was wounded during the robbery and recommended that Petitioner be resentenced to 20 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 wounded. The Petitioner hastrained and achieved Grade 1 in carpentry and joinery as a means of rehabilitation. The officer in charge Naivasha Maximum Prison by his letter dated 10th June, 2019 filed on 04th December, 2019 has vouched for the Petitioner's good conduct.

9. Petitioner was a first offender. The court record shows that the petitioner has served 14 years and 7 months since the date of conviction.

He is re-sentenced to **15 years'** imprisonment from **11th May, 2005** 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