



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

CRIMINAL PETITION NO. 67 OF 2019

BETWEEN

VINCENT ETYANG.....PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGEMENT

Introduction

1. On 21st June, 2010, the trial court in **BUSIA CRIMINAL CASE NO. 1059 OF 2008**, 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 **BUSIA HIGH COURT CRIMINAL APPEAL NO. 40 of 2010** which by a judgment dated 06th March, 2012 upheld the conviction and substituted the death sentence with a life sentence. The Petitioner subsequently appealed to the Court of Appeal in **KISUMU CRIMINAL APPEAL NO. 40 of 2012** which by a judgment dated 04th June, 2019 upheld the conviction and life sentence.

2. The Petitioner has petitioned this court for resentencing. He expressed remorse and stated that he was arrested in 2008 at the age of 28 years and had been in custody since then having served 10 years since conviction within which time he has been trained and obtained various certificates.

3. Ms. Gathu, Senior Prosecution Counsel for the state submitted that the offence was heinous in that the victim was not only robbed but also injured. While appreciating that the petitioner was arrested at the age of 28 years, the state recommended that he 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 he suffered cut wound on the back of head with a healed 6 cm scar with suture stitches.

9. Petitioner was a first offender. The complainant's motor cycle was not recovered. The attack on complainant's back of head was intended to incapacitate him and he is lucky to have survived. The court record shows that the petitioner has served 9 years and 6 months since the date of conviction. He is re-sentenced to **20 years'** imprisonment from **21st June, 2010** 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