



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYAMIRA**

**PETITION NO. 8 OF 2016**

**CALEB NYANG'AU MANYIZA.....PETITIONER**

**=VRS=**

**REPUBLIC.....RESPONDENT**

**RULING**

This petition is brought pursuant to various Articles of the Constitution which the petitioner claims were violated during his trial. Firstly, he alleges that he was rudely and harshly treated by the police during his interrogation thus denying him his right to access of justice. Secondly he avers that he is aggrieved by the manner in which the trial court handled his prosecution and by the Court of Appeal upholding the decision of the trial court and the High Court. Thirdly he reiterates his right to life and contends that his right to life was violated intentionally and unprocedurally as no law has sanctioned it. Fourthly, he contends that new and compelling evidence has become available. Fifthly he contends that the mandatory nature of the death sentence prevented the trial court from exercising its constitutional discretion to take his mitigation into consideration when sentencing him. He contends that the mandatory nature of the death sentence compromised his right to a fair trial, that the same was excessive, disproportionate, arbitrary, inhuman and oppressive as it also denied him the benefit of the least severe punishment that is commensurate with the gravity of the criminal offence committed. He further contends that the commutation of his death sentence to life imprisonment by the President is arbitrary and is not guided by any information by this court. Further he alleges to have been stripped of his dignity and also discriminated. He urges this court to interpret the Provisions of the Constitution progressively otherwise his fundamental rights/freedoms shall remain infringed, violated, denied and taken away.

At the hearing the petitioner submitted that he was seeking a fresh trial; that he did not get a fair trial as Section 204 of the Penal Code deprived the Judge discretion to impose a sentence other than what was provided. He then urged this court to consider a re-sentence. He urged the court to consider the documents he had submitted to it.

On his part, Senior Prosecution Counsel, Mr. Ochieng pointed out that the Supreme Court had pronounced itself in **Francis Kariuki Muruatetu v Republic** and that this court should invoke the orders therein.

I have considered the petition and submissions by the parties carefully. I must state that the petition is jumbled up in the prayers it seeks. Is it a new trial as provided under Article 50 (6) of the Constitution which gives a person convicted of a criminal offence the right to petition the High Court for a new trial where new and compelling evidence has become available? Or is the petitioner seeking to be heard in his mitigation and re-sentenced as the Supreme Court has now pronounced itself on the unconstitutionality of the mandatory nature of the death sentence – **Supreme Court Petition No. 15 and 16 of 2015 Francis Kariuki Muruatetu & Another V. Republic**. The petitioner's oral submissions did not shed any light on this confusion. In my view the court cannot grant him a new trial and order a re-sentencing simultaneously. It has to be one or the other. So the petitioner should have made it very clear which of the two he was seeking.

In any event this court would not have been in a position to grant him either of the two orders. This is contrary to his submission that the court considers his documents, the only document he filed in this case is the petition. The petition does not disclose the nature of the offence he was charged with let alone the court where he was tried and the High Court which heard his appeal. This court is therefore in the dark on the offence charged. This is confounded by his citation of Sections 203, 204 of the Penal Code and Section 8 (1) and (11) of the Sexual Offences Act. He neither furnished this court with the proceedings of his trial and the judgement nor the judgements of the superior courts and this court was not in a position therefore to confirm that he was sentenced to death as he alleges. The efforts of this court to call for the proceedings and judgements itself were confounded by the fact that in the petition the petitioner did not indicate the courts where his case was tried and the case numbers (both for the trial and the appeals). Be that as it may, rather than dismiss his petition, I shall strike it out and give him liberty to re-apply when he is in a better position to do so.

It is so ordered.

**Signed, dated and delivered in open court this 25<sup>th</sup> day of October 2018.**

**E. N. MAINA**

**JUDGE**