



REPUBLIC OF KENYA



**Chumba v Republic (Criminal Petition E050 of 2023)
[2024] KEHC 915 (KLR) (1 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 915 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL PETITION E050 OF 2023
JK SERGON, J
FEBRUARY 1, 2024**

BETWEEN

JUSTUS CHERUIYOT CHUMBA PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The Petitioner herein namely: Justus Cheruiyot Chumba, filed the instant Petition whereof he sought to have his sentence reduced. The instant application is for resentencing.
2. The Petitioner vide Principal Magistrate’s Court at Kericho Criminal Case No. 1023 of 2002 was tried for the offence of robbery with violence contrary to section 296 (2) of the *Penal Code*
3. The particulars of the charge are that on 15th March, 2002 at Kericho BP Petrol Station within Kericho Township the petitioner jointly with another, while armed with dangerous weapons namely a pistol and a knife robbed Joseph Mburu Mwaura of motor vehicle registration number KAE 758P, cash Kshs. 2, 150/=, a motorola mobile phone and an identity card and immediately before or immediately after the time of such robbery threatened to use personal violence to the said Joseph Mburu Mwaura.
4. The petitioner was alternatively charged with handling stolen goods contrary to section 322 (2) of the *Penal Code*. The particulars of the offence were that on the same day at Kipkelion in Kericho District otherwise than in the course of stealing, the petitioner dishonestly retained one motor vehicle registration number KAE 758P make Toyota Corolla knowing or having reason to believe it to be stolen. After a full trial the petitioner was found guilty of the main count on robbery and sentenced to death on 20th September, 2002.
5. The petitioner filed an appeal against the decision of the trial court vide Kericho High Court Criminal Appeal No. 56 of 2002, on 15th February, 2007 the appeal was dismissed, the conviction and sentence



- upheld by a two judge bench at Nakuru. The death sentence was subsequently commuted to life imprisonment pursuant to a presidential decree in 2009.
6. The petitioner filed a second appeal to the Court of Appeal at Nakuru vide Criminal Appeal No. 113 of 2007. The petitioner subsequently withdrew the appeal which was yet to be heard and determined after 16 years as court records were missing in order to pave the way for this court to determine his application for resentencing.
 7. In the instant Petition, the Petitioner cited section 50 (2) (p) and (q) of *the Constitution* as being the relevant provision of law in which his application is anchored. He reiterated the litigation history and stated that the instant application was an attempt to seek a more definite sentence; he therefore had abandoned the second appeal to pursue the instant application. He stated that he was remorseful and had made great strides towards rehabilitation, he pursued several courses while in prison and acquired several certificates. The petitioner urged this court to consider section 333(2) of the *Criminal Procedure Code* to have the time spent in remand factored in the sentence to meted out by this court. He did not cite any precedent.
 8. I have considered the Petitioner's written submissions whereby he is making submissions in mitigation. He stated that he is remorseful post-conviction and sentence. He stated that he had been adequately rehabilitated. The petitioner stated that during sentencing his mitigation was not considered as was given the statutory mandatory sentence death which was subsequently commuted to life. The petitioner was adamant that this prejudiced his trial and therefore contravened the purpose of mitigation as provided for in section 216 and 329 of the *Criminal Procedure Code*. The Petitioner beseeched this Court to pronounce a less severe definite sentence to give him a second chance in life.
 9. I have perused the Court record and the material placed before me and it is apparent that on 20th September, 2002, the trial court sentenced the Petitioner to death. The Petitioner lodged the first appeal to the high court which was dismissed, conviction and sentence upheld on 15th February, 2007, the death sentence was commuted to life imprisonment in 2009. The petitioner filed a second appeal to the court of appeal which he subsequently withdrew as the appeal which was yet to be heard and determined after 16 years as the file could not be traced in the court archives.
 10. The petitioner did not cite authorities, however, I find that the practice directions set out by the Supreme Court in *Muruatetu & another v Republic; Katiba Institute & 4 others (Amicus Curiae)* (Petition 15 & 16 of 2015) [2021] KESC 31 (KLR) (6 July 2021) (Directions) are applicable in this case.
 11. In the Muruatetu case (supra) the Supreme Court set out the following procedure for resentencing hearings;
 - (iii) All offenders who have been subject to the mandatory death penalty and desire to be heard on sentence will be entitled to re-sentencing hearing.
 - (iv) Where an appeal is pending before the Court of Appeal, the High Court will entertain an application for re-sentencing upon being satisfied that the appeal has been withdrawn.
 - (v) In re-sentencing hearing, the court must record the prosecution's and the appellant's submissions under section 329 of the Criminal Procedure Code, as well as those of the victims before deciding on the suitable sentence."
 12. I have considered the fact that the petitioner has withdrawn his appeal. I have also considered the petition and mitigation submissions by the petitioner while taking note of the fact that the prosecution was not opposed to the instant application. Considering all the above circumstances, the justice of this case, I hereby allow the petition and hereby sentence the petitioner to serve 30 years in place of



the death sentence which was commuted to life imprisonment. The sentence to run from the date of sentence i.e. 20th September, 2002,

DATED, SIGNED AND DELIVERED THIS 1ST DAY OF FEBRUARY, 2024

.....

J.K. SERGON

JUDGE

