



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL PETITION NO.56 OF 2019

ELIJAH KIPKURUI.....PETITIONER

- V E R S U S -

REPUBLIC.....RESPONDENT

RULING ON SENTENCE RE-HEARING

1. The Petitioner was sentenced to death on 15/7/2010 for the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code upon being found guilty in a Judgment delivered on 21/4/2010.
2. The particulars of the offence were that on the night of 2nd & 3rd November, 2008 at Kipsolu Village in Kericho District of Rift Valley Province, the Petitioner murdered Mary Chepkoech.
3. A summary of the Prosecution evidence was that the deceased was the Petitioner's girlfriend. They were living together in a semi-permanent house belonging to the deceased's employer.
4. The Petitioner approached PW.1, a Pastor and told him that the deceased had died. PW.1 went with the Petitioner to the house they were staying and they found the body of the deceased lying down and blood everywhere.
5. PW.1 escorted the Petitioner to the Police Station and he was arrested. PW.1 said the Petitioner told him he slapped the deceased. The body was removed to the mortuary where a post mortem was done and the post mortem stated the cause of death was high spinal cord injury. The body was reeking of alcohol.
6. Upon being placed on his defence, the Petitioner said the death of the deceased was accidental.
7. The Court found the Petitioner guilty as charged and sentenced him to death.
8. The sentence was subsequently commuted to life imprisonment.
9. The Petitioner has now filed this Petition seeking sentence re-hearing following the Supreme Court case of **FRANCIS KARIOKO MURUATETU -VS- REPUBLIC – SUPREME COURT PETITION NO.15 & 16 OF 2015** where the Supreme Court said the mandatory nature of the death penalty is unconstitutional.
10. However, the Supreme Court said that the death penalty is still lawful in appropriate cases.
11. I have considered the submissions filed by the Petitioner and it is noted that he is remorseful for the offence he committed and has taken steps to change his life for the better while in prison. Justice Odunga in Criminal Case no.55 of 2020, Republic versus Samuel Munyoki Mulungu stated that;

“In my view, fairness to the accused where a sentence re-hearing is considered appropriate would require a consideration of the circumstances prior to the commission of the offence, at the time of the trial and subsequent to conviction. The conduct of the accused during the three stages may therefore be a factor to be considered in determining the appropriate sentence.”

12. The Petitioner has been in custody since 17/11/2008 when he was first arraigned in Court.

13. I agree with the views of Justice Odunga, in **Republic versus Muema Makali (2019) eKLR**, where he stated that;

“That the possibility of reform and social re-adaptation of the offender is to be considered in sentence re-hearing, in my view implies that where the accused has been in custody for a considerable period of time the Court ought to consider calling for a pre-sentencing report and possibly the victim impact report in order to inform itself as to whether the accused is fit for release back to the society.”

14. The Probation Officer filed a Pre-Sentence Report stating that the family of the deceased and that of the Petitioner met and they wrote an agreement pertaining the performing of traditional rites. Both the deceased and the petitioner family reported that they are not opposed to the petitioner being released and are ready to welcome him back.

15. I find that there is evidence that the Petitioner was drunk at the time the offence was committed. The deceased and the Petitioner were lovers.

16. The Petitioner is remorseful for the offence he committed. He has attached a letter from the Chief Chaplain Father Paul Miring’u stating that he has participated in the activities of the Catholic Community in Prison and he has taken advantage of the spiritual programs offered. I therefore find sufficient evidence that the petitioner has reformed and his circumstances since incarceration has changed for the better.

17. I find that the Petitioner has been in custody for over twelve (12) years. I reduce his sentence to the period already served.

18. I accordingly order that the Petitioner be released forthwith unless lawfully held for any other reason.

Delivered, signed and dated at Kericho this 4th day of February, 2021.

A. N. ONGERI

JUDGE