



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 55 OF 2018

NAHASHON ADEGU KEAH.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein NAHASHON ADEGU KEAH was charged with the Offence of murder contrary to 203 as read with Section 204 of the Penal Code.
2. He was sentenced to death which was later reduced to life imprisonment.
3. His Appeal to the High Court was dismissed and sentence upheld.
4. The Petitioner is now in this court pursuant to the Supreme decision in **Francis Karioko Muruatetu & Another v Republic [2017] eKLR** in which the Supreme Court found the mandatory nature of death sentence to be unconstitutional.
5. When the matter came for resentencing, Ms. Balongo appeared for the State. Counsel submitted that the Petitioner committed a grave offence considering that a life was taken. Counsel prayed for a definite and deterrent sentence of 50 years' imprisonment.
6. The Petitioner on his part submitted that he regrets his action. That he has reformed and transformed through different trainings that have earned him skills which will assist in earning his daily bread if given a chance to rejoin the society. He also stated he is old and sickly.
7. This court called for a probation report, which indicates that the Petitioner's conduct is good and he is disciplined. In terms of training he has done carpentry, upholstery and biblical studies. He has been elevated to special stage in the prison progress stage system due to good character. The report also indicates that he is sickly, he is epileptic.
8. The Court in the Muruatetu Case (Supra, para. 71), considered that in re-sentencing in a case of murder, the following mitigating factors would be applicable;
  - (a) age of the offender;
  - (b) being a first offender;
  - (c) whether the offender pleaded guilty;
  - (d) character and record of the offender;
  - (e) commission of the offence in response to gender-based violence;
  - (f) remorsefulness of the offender;
  - (g) the possibility of reform and social re-adaptation of the offender;
  - (h) any other factor that the Court considers relevant.

9. I have considered the petition and the submissions. The Petitioner is a first offender. He has transformed by taking up courses to better himself. He has been in prison for 31 years; he committed the crime in his youth at 32 years, now he is a remorseful old man of 63 years. I am satisfied he has served sufficient time in prison and that he is now a changed person who can go out there and venture into business as he is now empowered through the training he went through in prison. His family has forgiven him and is ready to accept him back, give him part of the land left by their parents and start up a business for him.

10. In **Godfrey Muchiri Njuguna v Republic [2020] eKLR**, the court while sentencing the accused to the time already served and a further three years to be served in probation stated that:

**“the Applicant has been in custody for the last nineteen (19) years. He has demonstrably reformed. The Prison Authorities were unreserved in their recommendations for him. He now has three NITA certificates of vocational training meaning that he stands a good chance of pursuing productive economic activity if released from Prison. The Applicant also has a family that is willing to welcome him back in the fold and support him start life afresh.”**

**“In the circumstances of this case, I am persuaded that no more sentencing objectives would be achieved by the continued incarceration of the Applicant. The Probation Report is in accord. It concludes that the Applicant has strong social support system back at home, and that he enjoys support from local leaders and administration at the village level. The Report recommends that the Applicant is ripe for a Probationary sentence. I concur.”**

11. I am inclined to sentence the Petitioner to the term already served. The Petitioner is set at liberty unless otherwise lawfully held.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 15<sup>TH</sup> DAY OF MARCH, 2021.**

**E. K. OGOLA**

**JUDGE**

Judgment delivered via MS Teams in the presence of:

Petitioner in person

Mr. Fedha for Respondent

Ms. Peris Court Assistant