



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

PETITION NO. 178 OF 2019

DENNIS MIGUTE KAFANI.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein DENNIS MIGUTE KAFANI was charged with the Offence of murder contrary to 203 as read with Section 204 of the Penal Code.

2. The particulars of the case were that “on the night of 11th February, 2012 at about 9.30pm the deceased was asleep in his house in Jibana location of Kilifi County in the company of his young son Kennedy Udzite (PW2) when the door of his house was suddenly forced open. Two intruders entered the house whilst armed with a panga and a metal bar. They pulled the deceased from his bed and immediately started cutting and hitting him. Later with the assistance of other family members, they took the deceased to coast general hospital where he passed the following day while undergoing treatment.”

3. He was sentenced to death. His Appeal to the Court of Appeal 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. Wanjohi** appeared for the State. Counsel submitted that the Petitioner committed a grave offence. The massive wounds inflicted on the head of the deceased was a clear intention to cause grievous harm or death. Counsel prayed for a definite and deterrent sentence of 50 years.

6. The Petitioner on his part submitted that he regretted his action; that he is remorseful and has reformed by becoming a committed Christian; that he has two children who are suffering shame and pain since his arrest. That his entire family visits him in prison with anticipation of welcoming him back to the society. He stated that he has spent 5 years in prison and had spent 2 years in remand. He prayed to be set free to rejoin the society.

7. 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.

8. I have considered the petition and the submissions. The Petitioner is a first offender. He has reformed by becoming a committed Christian. However, there are aggravating factors. The Petitioner together with another person attacked the victim in his house at night and beat and hit him with iron bar continuously on his head and his body which led to his death. Post mortem report revealed that the deceased suffered deep cut wounds on the left ear and upper chest. Internally he had sustained skull fractures on the left side of the head and back. The cause of death was due to head injury following repeated assaults on the head.

9. This Court cannot condone such atrocious acts as committed by the Petitioner. The Petitioner has been in prison for 5 years and had spent 2 years in remand. This is not even close call to a sufficient punishment for his actions. In my view justice would be served by a jail term of 38 years. Consequently, I hereby set aside the death sentence imposed by the trial court, and in place thereof I jail the Petitioner to a jail term of 38 years from the date of arrest.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 13TH DAY OF APRIL, 2021.

E. K. OGOLA

JUDGE

Judgment delivered via MS Teams in the presence of:

Petitioner in person

Ms. Wanjohi for the DPP

Ms. Peris Court Assistant