



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

PETITION NO. 84 OF 2019

GEORGE MUSYOKI MAISONGE.....PETITIONER

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner was charged with two counts of murder contrary to section 203 as read with 204 of the Penal Code in Mombasa **HCCR.C.NO.18 of 2013**. He was tried, convicted and thereafter sentence to suffer death on one count, while the sentence on the second count was left in abeyance. His Criminal Appeal No. 197 OF 2006 to the Court of Appeal was dismissed.
2. The Petitioner has now petitioned this Court for review of sentence in view of the Supreme Court declaration in **Francis Kariokor Muruatetu & Another v Republic SCK Pet. No. 15 of 2015 [2017]** eKLR in which the apex court found the mandatory nature of the death sentence to be unconstitutional.
3. The particulars of the offence were that on 20/12/2000 at about 3.00pm /8/2009 at Kisimenyi village, Kasigau Location within Taita-Taveta District of the Coast Province, the Petitioner murdered one **Nduku Musyoki** and **Ndunge Musyoki**, two identical twins aged two years and who were his step daughters by brutally slashing them to death using a panga.
4. The Petitioner submits that he is fully rehabilitated and reformed thanks to the rehabilitation programmes offered at the prison for the 20 years he has been in jail. Further, he submitted that he is remorseful and deeply regrets his actions and urged this Court to consider the period he has been incarcerated while reviewing his sentence. The Petitioner has since embraced salvation, is a Christian and an elder in the prison church. There is evidence of his spiritual works in prison.
5. **Mr. Fedha** learned counsel for the D.P.P submitted that the Petitioner took away innocent lives despite being persuaded by witnesses who included his own mother, to give reason a chance. Mr. Fedha submitted that the Petition has no regard for human life and to date the family of the innocent children and the entire village are still in shock, and as a result, the said society needs to be protected from the Petitioner. Counsel urged this Court to jail the Petitioner to 50 years in prison.
6. I have carefully considered the submissions by the Petitioner and the Respondent. The **Sentencing Policy Guidelines, 2016** (“the **Guidelines**”) state that the aim of punishment is **community protection**, deterrence, retribution, rehabilitation, restorative justice and reformation.
7. This Court appreciates the fact that the Petitioner is remorseful for the crime he committed. That notwithstanding, appropriate sentence must be given to secure the society from any such crimes. Any sentence must also take the interest of the victims. In this case the innocent victims were deprived of the right to life by a man who refused to listen to reason and even disregarded pleas from his own biological mother who was begging the Petitioner to spare the lives of the little girls. In my view, this court must give justice to the victims.
8. I have considered all aggravating and mitigating circumstances in this case. It is a fact that the attack by the Petitioner on the two innocent toddlers aged 2 years was premeditated. The children had their heads split in half by a heavy blow with a very sharp panga. They died of cardiopulmonary arrest due to severe head injuries. The deaths must no doubt have caused them excruciating pain. I have similarly considered that the pain caused to the mother by the death of her twin daughters, which cannot be underestimated.
9. The Petitioner has however shown to this Court that he is truly repentful. To show that, he has accepted Jesus Christ as his savior and has undertaken several spiritual courses while in prison. He is a spiritual leader in prison and an elder of a church. It is this demonstrated change that has convinced me to meet out the punishment below. Without this, there would have been absolutely no mercy to this Petitioner from this Court. It is for this reason that I jail the Petitioner to serve 40 years in jail on the 1st count and 2nd count. The sentences should run concurrently.
10. I therefore hereby set aside the death sentence imposed upon the Petitioner. Instead thereof, I jail the Petitioner to serve a jail term of 40

years from the date of arrest on each count the sentences to run concurrently.

Right of appeal in 14 days.

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 DPP

Ms. Peris Court Assistant