



REPUBLIC OF KENYA

HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS CRIMINAL DIVISION

CRIMINAL CASE 25 OF 2006

AHAMED GOLICHA GALMA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON SENTENCE

1. The accused was arraigned on information from the Republic, dated; 16th March 2006, in relation to a charge of; murder contrary to; section 203 as read with section 204 of the Penal Code (Cap 63) Laws of Kenya. It was alleged that, he murdered; Galgalo Abduba on 11th November 2002, at Kiamaiko Estate Nairobi.
2. He was initially charged through, High Court Criminal Case No.104 of 2003, but it was declared a mistrial on 9th March 2006. However, he was charged in the matter herein and the final judgment rendered on 1st October 2009, by; Hon Justice J. B. Ojwang (as he then was). Consequently, he was sentenced to suffer death in the manner prescribed by the law.
3. Having been aggrieved by the decision of the High Court, the accused filed a notice of appeal to the Court of Appeal on; 10th November 2009, pursuant to Rule 60 of the Court of Appeal Rules 1972. The appeal was against both conviction and sentence, based on the Petition of Appeal filed on; 6th October 2009.
4. Be that as it were, after the death sentence was meted out, it was later committed to life imprisonment, as evidenced by; a letter dated; 3rd October 2019, from one, Charles G Mutembei OGW (ACP), officer in charge, Kamiti Maximum Prison, addressed to “Whoever it may concern”, seeking that, the accused be accorded any necessary assistance.
5. Even then, the record of appeal was admitted vide, Criminal Appeal No. 7 of 2017. The same was duly heard by; Makhandia, Gatembu and Murgor JJAs; and a judgment delivered on 6th August, 2019. The Court of Appeal ordered that, following the decision in the Muruatetu case, the “death sentence be and was set aside.
6. It was further ordered that, the sentence would be substituted with a term of imprisonment, but since the accused had not been given an opportunity to mitigate, the matter was thus referred to; the High Court for mitigation and determination of the appropriate sentence. The appeal succeeded to that extent.
7. On 18th February 2020, the accused addressed the court in mitigation to the effect that, he was sincerely apologetic and regrets what happened and/or the wrong he did. That, he has never committed any other offence before, has been in custody since 2002, and suffered greatly.

8. Upon considering the mitigation, the court ordered that, a pre-sentence report be provided, taking into account the views of the victim on sentencing and of the community's willingness to take the accused back into the society.

9. On 7th April 2021, a pre-sentence report was filed in accordance with the aforesaid order. The report indicates that; the accused is 81 years old, that he deeply regrets the offence. Further, his family members are ready to take him back. Similarly, the victim's mother is ready to have the accused released to facilitate, ongoing reconciliation process with the assistance of the clan elders. That, the community too has no objection to the release of the accused.

10. The report further indicates that he suffers from "array of health conditions", among them; high blood pressure, diabetes, peptic ulcers and partial eye sight.

11. I have considered the mitigation tendered by the accused, and the pre-sentence report. I have also considered the accused is first offender, Further, he was arraigned in court on; 16th March 2006. To date, he has been in custody for a total period of fifteen (15) years. Of these years, he was on trial before conviction for a period of three (3) years, and ten (10) years pending appeal. Therefore, he has been on custodial sentence for a period of 12 years.

12. As aforesaid, he is 81 years old and therefore very vulnerable due to COVID-19 pandemic. It stated that, both family members of the accused and complainant have commenced reconciliation process. In that case, I hold that, he will greatly benefit from a non-custodial sentence.

13. In the given circumstance, the death sentence having been set aside, I order that, he be released to serve sentence on probation for a period of three (3) years, at a place to be identified by the Probation Department, with effect from the date of this order.

14. It is so ordered.

DATED, AND SIGNED ON THIS 3RD DAY OF JULY 2021.

GRACE L. NZIOKA

JUDGE

DELIVERED VIRTUALLY ON 13TH JULY 2021 BY;

LILLIAN MUTENDE

JUDGE

In the presence of:

Ms Kimaru for the Respondent

Applicant present in person

Mutai - Court Assistant