



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**CONSTITUTIONAL PETITION NUMBER 8 OF 2020**

**(FROM ORIGINAL HIGH COURT CRIMINAL CASE NO. 119 OF 2010 KISII HIGH COURT)**

**ZACHARIA BOKONGO OGUTU.....PETITIONER**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

1. In a petition filed on the 21<sup>st</sup> May 2020 the petitioner seeks a re –sentencing. He claims that he was convicted of murder and was sentenced to death which was later on commuted to life imprisonment by the president.
2. He claims that his sentence was unconstitutional and in considering his resentence application the court should consider the period he spent in custody since his arrest to date.
3. He avers that he has been rehabilitated reformed trained and a law abiding citizen. He has been in prison for more than 11 years. That he has attained certificates. He pleads for mercy and leniency
4. The petitioner further urges the court to be guided by the ruling of the Supreme Court of Kenya in the case of Francis Muruatetu which held that the death sentence was unconstitutional. He submitted that the court should be guided by the sentencing guidelines in considering his petition for resentencing.
5. Mr. Otieno for the state urged the court to note that the petitioner was convicted of killing 2 people and that the court should give him an appropriate sentence.
6. I have read the judgment in murder case no 119 of 2010. The petitioner was convicted of the murder of 2 persons his wife and her son. The accused committed the murder and took off from his home leaving the 2 deceased's persons in their house. The petitioner was sentenced to death and later his sentence was commuted to life as per his submissions. The petitioner has failed to show how his current sentence is unconstitutional.
7. The Supreme Court in clarifying its decision in the Francis Muruatetu case stated that resentencing applies to murder case only.
8. The petitioner states that he has been in custody and jail for a total of 11 years. He was convicted of murdering 2 people. The deceased persons died a painful death. 2 innocent lives were lost. Though I did not seek a pre- sentence report in my view the petitioner does not deserve a non-custodial sentence. I have considered the period of 11 years and I resentence the petitioner as follows; the life sentence is set aside and the petitioner is sentenced to thirty (30) years imprisonment from the date of sentence by the trial court, the 4<sup>th</sup> of October 2012 for each count. The sentences to run concurrently.

Right of appeal explained.

**Dated, Signed and Delivered at KISII this 16<sup>th</sup> day of November 2021.**

**R. E. OUGO**

**JUDGE**

**In the presence of:**

**Petitioner Zacharia Bokongo Ogutu**

**Mr. Kaino State Counsel ODDP**

**Ms Rael Court Assistant**