



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 120 OF 2018

KALAMA MWARO NGALA.....PETITIONER

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGMENT

1. The Petitioner was charged and convicted for the offence of murder in Mombasa Criminal Case No. 45 of 2004 and sentenced to death. He has exhausted his appeal processes and is now in this court pursuant to the Supreme court decision in **Francis Karioko Muruatetu & Another vs. Republic [2017] eKLR** in which the apex court declared the mandatory nature of the death sentence to be unconstitutional.

2. The Petitioner murdered his own father using a panga. Mr. Fedha, learned counsel for the prosecution submitted that although the Petitioner has served 15 years in jail, is remorseful and has changed and embraced salvation, he should still be adequately punished so that a sentence of 40 years would be adequate.

3. On his part the Petitioner in mitigation submitted that the 15 years he has spent in jail is adequate punishment. The Petitioner submitted that he regrets the offence, and that he is now born again and shuns sin. He produced copies of certificates showing the skills he has acquired in prison. He has trained as a Trainer of trainers, completed a course by Family Transformation Ministries. He has also completed Bible Studies course and submitted a certificate of rehabilitation given to him by "*Run to Jesus (RJ) Gospel Singers.*"

4. The Petitioner submitted that this family has forgiven him, and to show this he pointed at his brothers and sisters seated in court. He submitted that he should be given a second chance to go outside and to preach the gospel of Jesus Christ and to advocate that crime does not pay.

5. The Petitioner in his submissions referred the court to the Book of Genesis 4:1-10 in the Holy Bible, and submitted that even Cain was forgiven by God when he killed Abel his brother. The Petitioner also sought forgiveness.

6. I have considered those submissions. The Petitioner comes across to this court as a person who has reformed and is obviously remorseful and regrets his crime except that there is now nothing he can do about it.

7. The zeal with which he has submitted for his early release is convincing. I have seen copies of certificates he has acquired while in prison. He is not an idler, and his quest for early release to help advocate for goodness in society is convincing. The Petitioner has served 15 years for killing his father. This court is satisfied with his mitigation and I hereby set aside the death sentence and jail the Petitioner for a term of 20 years from the date of arrest, five (5) of which years will be served in probation.

8. Consequently, I make the following orders:

(i) The Petitioner is jailed for 20 years from the date of arrest.

(ii) The remaining (unserved) part of those 20 years shall be served under probation.

(iii) The Petitioner shall report to the nearest police station twice in a year on 1st of every June and 31st of every December until the probation period is over; starting on 1st June, 2020.

(iv) The Petitioner shall not engage in any criminal activity during the period of probation and should he do that he shall be arrested and taken back to prison to serve the entire sentence.

Right of appeal in 14 days.

Dated, Signed and Delivered at Mombasa this 20th day of January, 2020

E. K. O. OGOLA

JUDGE

In the presence of:

Mr. Fedha for DPP

Petitioner in person

Mr. Kaunda Court Assistant