



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC.APPL NO.120 OF 2018

STEPHEN SHEM SHITUBA.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. This is a ruling on application for resentencing. The applicant was charged and convicted off the offence of **Robbery with Violence Contrary to Section 296 (2) of the Penal Code**. He was sentenced to death. He has exhausted his right of appeal by filing appeal in both the High Court and Court of appeal.

2. On 20th January 2020, he submitted that he has reformed and prayed to be given a second chance to join his family. He stated that he has been in prison for 18 years now and has trained in carpentry, joinery and has learned how to use circular machine to split timber.

3. The applicant also said he has repented and has been a Christian for 2 years now.

4. In response, the state counsel urged the court to uphold the sentence in view of the fact that the applicant used dangerous weapons leaving serious injuries on the victim. She submitted that the applicant was also convicted of rape.

ANALYSIS AND DETERMINATION

5. I note from the record that the applicant with two others were convicted for **Robbery with Violence and Rape**. They filed appeal to the High Court and the conviction on both counts and sentence upheld. For **rape**, they were sentenced to **15 years imprisonment and 4 strokes of the cane** under the **Section 140 in the Penal Code**.

6. From the applicant's submissions he has served 18 years. He has gone through trainings, which will enable him, engage in gainful activities in the community to support himself and the community.

7. From the recommendation dated 6th June 2019 from prison, the applicant has reformed. The report confirm that as at June 2019, he had served 17 years in prison.

8. In my view the applicant has reformed and having attained training while in prison, he will be useful to the community and his family.

9. I therefore find that the period he has served in prison is sufficient for the two counts he was convicted of.

10. FINAL ORDER

1. 18 years already served is sufficient

2. Applicant is hereby released unless lawfully held.

Ruling dated, signed and delivered at Nakuru this 20th day of February 2020

RACHEL NGETICH

JUDGE

IN THE PRESENCE OF:

Schola – Court Assistant

Rita for State

Accused in person