



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL PETITION NO. 91 OF 2018

RICHARD CHEMJOR NGEIYWA.....PETITIONER

AND

REPUBLIC.....RESPONDENT

RULING

1. **The Petitioner herein** was convicted and sentenced to death for the offence of robbery with violence contrary to Section **296(2)** of the Penal Code in Kitale *Criminal Case No. 1496 of 1997* on 29/5/2001. Both his first and second appeal were dismissed.

2. The Petitioner also filed a petition in Kitale High court Misc. Criminal Petition No. 1 of 2016 for re-trial under Article 50(6) of the Kenyan Constitution which was dismissed on 10/5/2018.

3. **He has now filed this Petition pursuant to** the Supreme Court decision in *Francis Karioko Muruateru & Another v Republic SCK Pet. No. 15 OF 2015 [2017] eKLR* declaring the mandatory death sentence for the offence of murder unconstitutional. In the case of *William Okungu Kittiny v Republic KSM CA Criminal Appeal No. 56 of 2013 [2018] eKLR*, the Court of Appeal applied the *Muruateru* decision *mutatis mutandis* to the provisions of **section 296(2)** of the *Penal Code (Chapter 63 of the Laws of Kenya)* which imposes the mandatory death penalty for the offence of robbery with violence. This court is therefore being called upon to resentence the Petitioner pursuant to that decision.

4. I have considered the *Sentencing Policy Guidelines, 2016* which provided for a four tier methodology for determination of a custodial sentence. The first point is establishing the custodial sentence under the applicable statute. Second, consider the mitigating circumstances or circumstances that would lessen the term of the custodial sentence. Third, aggravating circumstances that will go to increase the sentence. Fourth, weigh both aggravating and mitigating circumstances.

5. Considering the fact that the aforementioned guidelines did not take into account the fact that the death penalty would be declared unconstitutional, the Court in the *Muruateru Case (Supra, para. 71)*, considered that in re-sentencing in a case of murder, the following mitigating factors would be applicable;

- (a) *age of the offender;*
- (b) *being a first offender;*
- (c) *whether the offender pleaded guilty;*
- (d) *character and record of the offender;*
- (e) *commission of the offence in response to gender-based violence;*
- (f) *remorsefulness of the offender;*
- (g) *the possibility of reform and social re-adaptation of the offender;*
- (h) *any other factor that the Court considers relevant.*

6. A look at other sentences that were imposed by courts after the *Muruateru* case in cases of this nature implies that courts have considered a minimum of 20 years as sentence. This Court in *Benjamin Kemboi Kipkone Vs Republic (2018) eKLR*, substituted the death sentence

with 20 years' imprisonment with effect from the date of judgment where 3 robbers armed with an Ak 47 rifle robbed the complainants of Kshs. 250,000/= and a mobile phone.

7. In **Paul Ouma Otieno Vs Republic (2018) eKLR** where the convict was armed with an AK 47 rifle and a kitchen knife and robbed the complainant of cash Kshs. 450,000/= and 3 mobile phones , **Majanja J** substituted the death sentence with 20 years' imprisonment commencing on the date of the sentence by the trial court

8. In the instant case, the particulars were that the Petitioner while armed with an AK rifle, robbed the complainant of Kshs. 220,000 and before or after such robbery shot dead one John Muturi

9. I have considered that the petitioner has already served 20 years of the sentence. I have also considered the seriousness of the offence, the fact that a life was lost as a result of the petitioner's greed.

10. In my view, I do not think that the period he has served in prison is sufficient for the serious offence committed by the petitioner. I hereby re sentence him to **Twenty five (25) years** imprisonment from the date he was convicted by the trial court, that is 29/5/2001.

Signed, dated and Delivered at Kitale on this 5th day of March, 2020.

H.K. CHEMITEI

JUDGE

5/3/2020

In the presence of:-

Ms Kagali fro the Respondent

Applicant – present

Court Assistant – Kirong

Ruling read in open court