



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

(CORAM: CHERERE- J.)

PETITION NO. 46 OF 2019

BETWEEN

SIMON KIPROP LELEI...PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGMENT

1. **SIMON KIPROP LELEI, (Petitioner)** was convicted and sentenced to death for the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code** in **Kisumu High Court Criminal Murder Case No. 41 of 2006** on 19th December, 2006. The conviction and sentence was upheld on 08th May, 2009 by the Court of Appeal in **Criminal Appeal No. 455 of 2007**.

2. By a petition filed on 07th August, 2019, the Petitioner has petitioned this court for resentencing on the main ground that the death sentence imposed on him is unconstitutional.

3. Ms. Gathu, Senior Prosecution Counsel for the state opposed the resentence on the ground that the Petitioner committed a heinous crime and has not undertaken any training as a means of rehabilitation and urged the court to uphold the life sentence.

Analysis and Determination

4. At the time of the Petitioner's conviction, death was the only available sentence for murder.

5. The Supreme Court decision in ***Francis Kariuki Muruatetu & Another v Republic & 5 others [2016] eKLR*** declaring the mandatory death sentence unconstitutional has necessitated resentencing of all persons previously sentenced to the mandatory death sentence.

6. I have considered ***The Sentencing Policy Guidelines, 2016*** and its application which is intended to promote transparency, consistency and fairness in sentencing (See ***Michael Kathewa Laichena & another v Republic [2018] eKLR***).

7. Under the proviso to **section 333(2)** of the ***Criminal Procedure Code (Chapter 75 of the Laws of Kenya)***, the court in resentencing a Petitioner is entitled to take into account the period the petitioner has spent in custody in determining the sentence and mitigating and aggravating circumstances.

8. The court record shows that the Petitioner was in custody for 5 years during trial and has served 14 years. During his stay in prison, the Petitioner has not undertaken any training as a means of reformation.

9. This court requested for the Petitioner's home report and Victim Impact Assessment report for its consideration during resentence. The home report discloses that the Petitioner who is 47 years old was not married by the time of his arrest. His family members do not recommend non-custodial sentence.

10. I have reflected on the fact that the Petitioner killed the deceased in broad daylight and in the presence of other people. The injuries inflicted on the deceased were so vicious and I have no doubt that she endured a lot of pain. The attack was unprovoked. The deceased's family as stated in the victim impact assessment report have every reason to be bitter with him.

11. I have considered that the Petitioner has not undertaken any training as a means of reformation and I have come to the conclusion that he does not have the potential for productive life outside prison. I therefore re-sentence him to **30 years'** imprisonment from date of the date of his sentence on **03rd July, 2003** when he was first arraigned before the court.

DATED AND SIGNED IN KISUMU THIS 05th DAY OF *March*, 2020

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Amondi & Okodoi

Petitioner - Present in person

For the State - Ms. Gathu