



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

PETITION NO. 22 OF 2018

JACOB MUCHOMBA BAIMUNYA.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGMENT ON RE-SENTENCING

1. The petitioner, **Jacob Muchomba Baimunya**, was charged before this court with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code**. The particulars of the offence are that on 6th September 2002 at Kiguru Location in Meru North District within the then Eastern Province, the petitioner murdered Jeremiah Kirema.
2. After the trial, the applicant was found guilty and sentenced to death. Being aggrieved by that decision, the petitioner appealed to the Court of Appeal at Nyeri, Criminal Appeal No. 128 of 2008 which appeal was dismissed 23/05/2013.
3. Vide his application the petitioner petitioned this court to review his sentence on the basis of the Supreme Court decision in the case of **Francis Muruatetu and Others vs Republic [2017] eKLR**.
4. In that case, the Supreme Court of Kenya held that by making death mandatory sentence in **Section 204 of the Penal Code**, the section was unconstitutional to that extent, for it denied the Court its discretion in sentencing. The Court also stated some of the considerations a court should take into account in sentencing, to wit; *age of the offender, being a first offender, whether the offender pleaded guilty, the character and record of the offender, commission of the offence in response to gender-based violence, remorsefulness of the offender, the possibility of reform and social re-adaptation of the offender and any other factor that the Court considers relevant*.
5. I have considered the foregoing and the circumstances under which the offence was committed. The appellant was hired to care for and nurse PW1 and deceased as he had just undergone the rites of passage. He did not get his agreed fee from PW4 and this angered the appellant to the extent of threatening to burn down the house he was staying with the boys. Later that night the hut was set on fire resulting in the deceased's death.
6. The state urged that the sentence be maintained. Nevertheless, if the court reviews the sentence then it should impose twenty five (25) years or more.
7. In mitigation the petitioner stated that he has suffered for about seventeen (17) years and has learnt his lesson.
8. According to the prisons' report, the petitioner who is a first offender was arrested on 22/04/2003. He regrets his actions, has participated in rehabilitation programs, gotten several church awards and certificates, demonstrated outstanding character while in custody and his relatives have been visiting him regularly. Since his jail term he has fully embraced the correctional core values of reformation and rehabilitation thus considered as a person who will integrate well with the outside world.
9. I have also considered the mitigation by the petitioner and the prisons' report. This is case of transferred malice. It is unfortunate that the deceased died because fees for his care was not readily obtained by the Appellant. Similarly, to die in a fire is painful and horrible experience. But, one thing puzzles me; how a person in his right mind could commit such heinous act of murder merely because he had not been paid fees. Where is human worth? Where is human rationality? This kind of anger is not justified whatsoever. The foregoing notwithstanding, in suitable cases, there is always room for rehabilitation of people who have committed heinous crimes. The objective is to turn such person into a productive person. In light of the reports by the prison service, I am persuaded to review the sentence herein. Accordingly, I set aside the death sentence and in lieu thereof, he is sentenced to a jail term of Twenty-Five (25) years from the date he was first arraigned in court for this offence. It is so ordered. Right of appeal explained.

Dated, signed and delivered Milimani Nairobi this 21ST day of APRIL 2020

F. GIKONYO

JUDGE

Representation:

Applicant – In person

Respondent – DPP, Meru

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