



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 88 OF 2018

JULIUS SHUKRANI MGANGA.....PETITIONER

AND

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT

1. The Petitioner was convicted for the offence of Murder contrary to Section 203 as read with 204 of the Penal Code and sentenced to death in Mombasa HCCr. Case No. 62 of 2012. He appealed in Criminal Appeal No. 2 of 2017 but the Appeal was dismissed and sentence upheld.

2. The Petitioner has now petitioned this court for review of sentence in view of the Supreme Court declaration in ***Francis Kariokor Muruatetu & Another vs. Republic SCK Pet. No. 15 of 2015 (2017) eKLR*** in which the apex court found and held that the mandatory nature of the death sentence is unconstitutional.

Brief Circumstance of the offence

3. The particulars are that on 22nd October, 2012 at Mbaya Mose Village, The Petitioner alongside another murdered Osman Salat Hanish. The deceased used to trade in livestock and on the date of the alleged offence the Petitioner was amongst other people drinking palm wine at the home of one John Mbura. The Petitioner took a phone belonging to Emmanuel and introduced himself on phone as "Kazungu Baya", went ahead and set up a meeting with the person on the other side telling him he would take him somewhere the following day to buy a cow. Two days later, John Mbura received information that there was a man who had gone missing from the area. Three days later the deceased's body was found and it was alleged that he was last seen with the Petitioner and two other Somali men.

4. The Petitioner submitted that the death sentence which was commuted to life imprisonment is unconstitutional. He has now exhausted his right of appeal and approaches this Court to declare the death sentence unconstitutional and contrary to Article 50(1) and Article 25(a) of the constitution, and to impose an appropriate sentence upon him.

5. He further submitted that the court did not consider his mitigation as he is a first offender and has never been accused of breaking the law and at the same time he is very remorseful. The Petitioner submitted to have undergone rehabilitation, which will assist him if given the chance to rejoin the society. He submitted that the offence was accidental and regretted it and as such prays for 20 years sentencing.

6. The prosecution submitted that the Petitioner lured the deceased to his death whereby he was butchered and body dumped in a shamba; that the Petitioner having served 7 years in custody ought to be handed a deterrent sentence of 40 years.

7. I have considered the submissions. The Petitioner lured the deceased to his death. He caused the death of an innocent man for which he must be adequately punished.

8. In consideration of the premises I make the following judgment:-

i) I hereby set aside the death sentence imposed upon the Petitioner by the trial court.

ii) In place thereof I hereby sentence the Petitioner to a jail term of Thirty Five (35) years from date of arrest.

That is the Judgment of the court.

Right of appeal in 14 days.

Dated, Signed and Delivered at Mombasa this 9th day April, of 2020.

E. K. O. OGOLA

JUDGE

In the presence of:

Petitioner in Person via video link

Ms. Mwangeka for DPP

Mr. Kaunda Court Assistant