



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS CRIMINAL APPLICATION CASE NO. 718 OF 2018

DAVID NGUGI GICHURU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicant filed this application dated 30.10.2018 on 20.12.2018 seeking resentencing. The simple facts preceding this application are that the applicant has been charged, tried and convicted of the offence of murder contrary to section 203 of the Penal Code in High Court (NAIROBI) Criminal Case Number 41/2004 on 12.4.2007. He was sentenced to suffer death. He had filed an appeal against the said conviction and sentence, being court of Appeal, Criminal Appeal NO. 134 of 2007. By a Judgment delivered on 1.7.2011, the Court of Appeal dismissed his appeal wholly and confirmed the findings of the High Court.

It has further been declared by the applicant that his sentence was in 2009 commuted to life imprisonment by presidential decree.

The applicant has now come to court under section 333(2) of the Criminal Procedure Code, that the court do revise his sentence to consider the period he has spent in custody. He has also come to court pursuant to the directions given by the Supreme Court in Petition No. 15/2015, Francis Muruatetu and another Versus Republic, so that he be allowed to mitigate and be resented.

The provision to section 333(2) of the Criminal Procedure Code, states;

“Provided that where the person sentenced under sub-section (1) has prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”

The above provisions stipulate that the period spent in custody awaiting determination of the trial ought to be accounted for in computing sentence. Obviously this was not executed in the applicant’s case in view of the capital charge of murder that he faced and which then attracted a mandatory death sentence. The applicant has now got the opportunity to mitigate following the decision of the Supreme Court in the Muruatetu case.

He has now submitted that he has been custody (prison) for 20 years during which time he has learnt tailoring. He has also reformed. Following on application by counsel for the state, the court only obtained a social inquiry report about the applicant. I have perused the same. Amongst other issues, the report notes.

- That the applicant is deeply remorseful.
- That has undergone rehabilitation over a period of 20 years while in custody
- That has undergone various trainings and acquired technical skills in tailoring, sign writings among others.
- That at the time of arrest, he was 18 years of age.
- His family members are willing to have him back.

I have considered the above mitigations of the applicant and the findings of the probation officer’s report. I am convinced that it is proper to resentence the applicant accordingly taking into account the serious nature of the charge he was convicted on which conviction was confirmed by the Court of Appeal. I accordingly resentence the applicant to an imprisonment term of 25 years. This sentence is to run from the date of arraignment in court for plea on 17.2.2004. Orders accordingly

D. O. OGEMBO

JUDGE

10.7.2020

Court:

Ruling read out in open court in presence of the applicant (via Zoom) and Mr. Mutuma for the state.

D. O. OGEMBO

JUDGE

10.7.2020

SIGNAL