

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

PETITION NO 35 OF 2019

HENRY MATUMBI MWORIA.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING ON RE-SENTENSING

1. The petitioner, **Henry Matumbi Mworja**, with 4 others were charged before this Court with murder contrary to **section 203 as read with section 204 of the Penal Code**. The information charged that on 11/2/2006 at Kangeta Location, in Igembe District within Meru County, the petitioner with 4 others murdered **Zakayo Michubu Kaumbuthu**.

2. After trial, they were found guilty and sentenced to death. Being aggrieved by that decision, they appealed to the Court of Appeal which appeal was dismissed on 11/7/2019.

3. Vide his Motion on Notice dated 10/9/2019, 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 the mandatory nature of the death sentence under **Section 204** of the Penal Code was unconstitutional as it denied the Court its discretion in sentencing. The Court proceeded to set out the criterial or the principles that should guide a Court in sentencing. Some of the considerations are *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 petitioner and his co-accused were convicted on circumstantial evidence. They were seen carrying the body of the deceased on the material day at about 7 am. They were unable to give an explanation as to how they came by the body of the deceased. The post mortem report showed that the body had burns on the right forearm, fracture of the left rib, blood in the chest and a fracture of the skull. The death must have been severely painful.

6. In his written mitigation, the petitioner indicated that he is remorseful, he has been in custody for 14 years, that he is now rehabilitated. He is also a first offender and asked for forgiveness.

7. The state urged that the death sentence be maintained and that if substituted, the petitioner be sentenced for a sentence of 20 years.

8. Accordingly, taking into consideration the facts of the case and how the offence was committed as well as mitigation, I set aside the death sentence and substitute therefor the sentence of 25 years. The sentence shall run from the date the petitioner was first sentenced, that is 8/2/2008.

DATED and **DELIVERED** at Meru this 9th day of July, 2020

A. MABEYA

JUDGE