



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISC.APPL NO.107 OF 2018

MAURICE OCHIENG JUMA.....1ST APPLICANT

BENSON SALIM HASSAN.....2ND APPLICANT

JACOB MAUNDA LUSENO.....3RD APPLICANT

SAMUEL MUYA BENSON.....4TH APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. The four Applicants jointly filed application for resentencing. They were charged with the offence of **Robbery with violence contrary to section 296(2) of the Penal Code**. They were sentenced to death and their sentences were later commuted to life imprisonment. Their appeals against conviction and sentence to both Superior Courts were dismissed. He applied for resentencing in view of **Muruatetu case** which declared mandatory nature of death sentence unconstitutional. They have been in prison for 17 years.

2. While in prison, the 1st, 3rd and 4th applicants have been trained in carpentry while the 2nd applicant has trained in guidance and counselling. Each stated that they have reformed and prayed to be released back to the community as they will engage in activities which will be helpful to the community.

3. In response, **Ms. Rita Rotich** for the state urged the Court to consider the aggravating circumstances. She urged Court to consider that actual violence was used against the victims and that dangerous weapons were used; she urged Court to consider impact on the victims leading to psychological trauma.

4. I called for presentence report from the probation officer. From the probation officer's report, the 1st applicant was arrested at the age of 19 years. He was convicted and sentenced to death. The family of the victim could not be interviewed; she was not traced as the offence was committed sixteen years ago. From the report, the applicant's family is ready to have him back. She stated that the applicant regrets having committed the offence and from the letter from prisons he has been of good conduct while in the facility.

5. The probation officer found that the 1st applicant has strong family support and that he has taken advantage of rehabilitation programs offered in prison facility to train in carpentry. The probation officer got assurance from the area chief that he will ensure the safety of the applicant.

6. In respect to the 2nd applicant, the probation officer stated that the immediate family pray that the applicant be released, while the local community and local administration is opposed to his release for having been involved in dangerous gang. That the community members describe the applicant as dangerous whose security and that of the community cannot be guaranteed should he be released from custody; that there are high chances that he may be attacked upon his release. He however stated that the recommendation letter from prison portray the 2nd applicant as a disciplined person. He further stated that the 2nd applicant has no strong social support and while in prison the 2nd applicant did not learn any skill. The probation officer's recommendation is that his sentence be reviewed to a lesser sentence which he can continue serving.

7. As concern the 3rd applicant, the probation officer stated that he was arrested about 15 years ago and the plea of his family is to be released on non-custodial sentence. She stated that the victim of the offence cannot be traced. Further that a cross section of the 3rd applicant's neighbors want him back as long as he does not disrupt the community. She stated that the 3rd applicant still plead his innocence and the 1st and 2nd applicant also vouch for him; they agree that he was not part of the gang that committed the crime that night. Further that from the prisons letter of recommendation, his character is above reproach; that he has no specific training save for spiritual rehabilitation and peer

training; further that he earned a living as tractor driver prior to his arrest.

8. The probation officer stated that the 3rd applicant's mother is willing to mobilize her children to assist the 3rd applicant construct a house if his sentence is reviewed to non-custodial. She further stated that the family and community are excited to have him back if his sentence is reviewed.

9. In respect to the 4th applicant, the victim was traced and interviewed but due to trauma she went through, she was not willing to talk about the issue. From the report, the applicant promised to leave the area and settle in Bahati. The family is willing to help him settle. Report indicate that the 4th applicant is 39 years and has been in prison for 16 years. The probation officer recommended noncustodial sentence.

10. I have considered prayer by the 4 applicants herein for review of their sentences. I have considered report by probation officer. Save for the 2nd applicant, the probation officer indicated that the family and local administration and community are willing to accept the applicants back. As for the 2nd applicant, the family is willing to take him back but the local administration and community are opposed to his release. 2nd applicant is considered a dangerous person by the community and release may endanger his life and that of the community. I also note that he has not learned any skill in prison and he is 40 years old now.

11. From the foregoing I find it appropriate to reduce 2nd applicant's sentence to 30 years' imprisonment and upon his completion of jail term he serves on probation for 3years.

12. In respect to the 3rd applicant, I reduce imprisonment term to period already served plus probation sentence for 3 years.

13. For 1st and 4th defendant sentence reduced to 25 years' imprisonment and upon completion of the jail term to serve on probation for 3 years

14. **FINAL ORDERS**

1. 1st and 4th applicant's imprisonment reduced to 25 years' imprisonment sentence plus probation sentence for 3 years upon completion of imprisonment.
2. Sentence of 3rd applicant reduced to sentence already served and probation sentence of 3 years.
3. Sentence of 2nd applicant reduced to 30 years' imprisonment and thereafter to serve on probation for 3 years.
4. Sentences for 1st, 2nd and 4th applicants to run from the time of sentence by the lower court.

Ruling dated, signed and delivered via zoom at Nakuru This 16th day of July, 2020

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RACHEL NGETICH

JUDGE

In the presence of:

Jeniffer - Court Assistant

1st , 2nd , 3rd & 4th Applicants in person

Rita for State