



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISC.APPL NO.123 OF 2018

SMM.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. This is a ruling on application for resentencing. The applicant had been charged and convicted of the offence of **Robbery with violence contrary to Section 296(2) of the Penal Code**. He was sentenced to death on 1st February 2007. He has exhausted his right of appeal by filing appeal in both the High Court and Court of Appeal. His sentence was commuted to life imprisonment in the year 2009. He has served 13 years' imprisonment.
2. The applicant relied on the case of **Francis Karioko Muruatetu Vs Republic [2017] eKLR** to argue that the mandatory life sentence imposed by the trial Court and upheld by the High Court is excessive and harsh and sought an appropriate sentence.
3. The applicant orally submitted that he has served as a footballer in prison and he has been a coach. He stated that he will go and continue playing football and also do farming. He said he was 17 years old when he was arrested; he was not married and he is now 31 years old. He prayed that he be given an opportunity to go back to the community.
4. I called for probation officers report before the state counsel responded.
5. In response **Ms. Rita Rotich** for the state opposed the application and urged Court to consider aggravating circumstances. She submitted that crude weapons which included pangas, rungs and axes were used to commit the robbery and the victims were injured.
6. In response the applicant urged Court to consider the period he has served.

ANALYSIS AND DETERMINATION

7. The applicant herein was sentenced to death which was later commuted to life imprisonment. The sentence imposed was the mandatory sentence provided by statute. Mandatory nature of sentences was however declared unconstitutional by Supreme Court in **Francis Karioko Muruatetu Vs Republic [2017] eKLR**. The Supreme Court stated that mandatory nature of sentences takes away the discretion of the trial Court to determine sentence to impose which should be determined on the basis of circumstances and mitigating factors advanced in a particular case. The Supreme Court found that the taking away of discretion of the Court renders the mitigating factors superfluous.
8. I note that the applicant has taken the period he has served prison positively and learnt skills to improve himself for his benefit, family and community. This is evidence of resolve to reform and be of benefit to the society. He also appears remorseful and willing to be a law abiding citizen.
9. In view of the above, I find that the applicant deserves reduction of sentence. I therefore reduce the applicant's sentence to 20 years' imprisonment.

10. FINAL ORDERS

1. Sentence is reduced to 20 years' imprisonment.
2. The sentence to run from the time the applicant was sentenced in the lower court.

Ruling dated, signed and delivered via zoom at Nakuru This 21st day of July, 2020

RACHEL NGETICH

JUDGE

In the presence of:

Jeniffer - Court Assistant

Applicant in person present

Rita for State