



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**CRIMINAL PETITION NO. 14 OF 2018**

**FROM ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL MURDER CASE NO.9 OF 2012 OF THE HIGH COURT  
AT HOMA BAY**

**SAMUEL ACHIYA EDDAN ALIAS WAZIRI.....APPLICANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**RULING**

**[1]** The Notice of Motion filed herein on **18<sup>th</sup> May, 2018** by the applicant, **Samwel Achiya Eddan** alias **Waziri** is for re-hearing of the original trial on the question of the mandatory sentence of death imposed against the applicant and others for the offence of murder, contrary to Section 203 read with Section 204 of the Penal Code.

The motion was prompted by the decision of the Supreme Court of Kenya in the case of **Muruatetu & another Petition NO.15 of 2015**, in which the mandatory nature of the death sentence rather than the death itself was somehow outlawed by being declared unconstitutional.

**[2]** It was that declaration of the Supreme Court and the directions which followed that opened the floodgates of applications such as the present one in which the applicant prays for a substitution of the death sentence imposed upon him for one of imprisonment for a period of time as the court may at its discretion deem fit.

The record shows that in mitigation during the sentencing proceedings the applicant through the defence counsel stated that he was remorseful for the offence which he regretted as the deceased died out of lynching by a mob of people (i.e. mob-justice). He personally indicated that he knew nothing about the matter and prayed for help from the court. His defence counsel said that he was in the prime of his life and urged the court to consider an alternative sentence.

Of course, the trial considered the mitigation but could not, unfortunately, depart from the then mandatory requirement of section 204 of the Penal Code. Ultimately, the applicant and co-accused were sentenced to death.

**[3]** The circumstances of the offence indicated that the deceased was as it were, “led to the slaughterhouse” i.e. a mob of people at Sindo market, after being apprehended by the applicant and others on suspicion of theft of a motor cycle.

Apparently, the applicant and his co-accused as well as the deceased were all said to be motor cycle taxi (boda-boda) operators at Sindo within Suba-Homa Bay County. Therefore, in handing over one of their own (deceased) to the mob at Sindo market on allegation of stealing a motor cycle, the applicant and his co-accused clearly intended that the deceased be savagely punished by being subjected to “mob-justice” in which he was lynched and occasioned fatal injuries..

**[4]** Undoubtedly, the applicant and his co-accused and others took the law into their own hands and caused the death of the deceased. This explained why their conviction by the trial court was inevitable and so was their sentence to suffer death due to the then mandatory nature of section 204 of the Penal Code.

Taking into account the foregoing circumstances of the offence and the applicant’s mitigating factors and considering that the mandatory nature of the death sentence has since been rendered obsolete by the decision in

the **Muruatetu case** (supra), the present application which is not opposed by the state/respondent is reasonably merited. It is therefore allowed to the extent that the death sentence imposed upon the applicant by the trial court on 25<sup>th</sup> May 2015 is hereby set aside and substituted for a sentence of imprisonment for a period of ten (10) years from the date of the impugned sentence.

Ordered accordingly.

**J.R. KARANJAH**

**JUDGE**

**[Delivered and signed this 1<sup>st</sup> day of October, 2020].**