



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. CRIMINAL APPLICATION CASE NO. 99 OF 2019

LESIT, J

BENJAMIN KARANJA WANJIKU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON RE-SENTENCING

1. The Applicant, **BENJAMIN KARANJA WANJIKU** was charged before the High Court Nairobi Criminal Division, Criminal Case No. 55 of 2005 with one count of **Murder** contrary to **section 203** as read with **section 204** of the **Penal Code**. The Applicant was convicted by this court (APONDI, Judge) on 17th December, 2008, following a full trial. He was sentenced to death.
2. The Applicant filed an appeal before the Court of Appeal, being Criminal Appeal No. 281 of 2008 in which he and his co-accused in the case (now deceased) challenged both the conviction and sentence. That appeal was heard by Omolo, Bosire and Aganyanya JJA and dismissed in its entirety.
3. The Applicant has now filed a Chamber Summons application before this court dated filed on 24th June 2020. The State had promised to file their submissions in answer to this application for Re-sentencing but none was filed as late as Friday 6, 2020. The Applicant filed his and I will consider it. He also filed various certificates showing courses and skills he has learnt while in prison. I have taken each of them into consideration. I called for the Re-sentencing Report from the Probation. One was filed by Ms. Mercy Kanyangi. I will be considering it in this ruling.
4. The Applicant in his filed written submissions states that he has exhausted the appeal with the Court of Appeal and that his appeal had been dismissed. He urges the court to review his sentence having consideration to his mitigation, and to consider the period he has spent in custody in line with **Section 333 (2)** of the **Criminal Procedure Code**. He urges the court to give him the least severe sentence having regard to **Article 52 (2) (g) of the Constitution**, and urges the court to release him or alternatively release him on Probation sentence.
5. He relies on the Supreme Court decision of **Francis Muruatetu and another Vs. Rep Petition No 15 of 2015**. He also relied on the Sentencing Guidelines given by the Supreme Court in the case he relied upon.
6. The Applicant, in his written submissions gives his mitigation and states that he was a first offender, that he was remorseful and very sorry for all those he offended especially the family which was in grief and his family who he failed through his deeds. He states that he does appreciate that no amount of remorse could erase the pain he had caused to his family.
7. The Applicant relies on the case of **Madamba V. Rep Criminal Appeal No. 12 of 2013** where the court of appeal relying on the mitigation of the Appellant, his remorsefulness, that he had reformed and the modest value of items he had robbed and concluded that he had already paid his debt to the society. This case does not assist the Applicant in the sense that in the instant case, it was not robbery of a modest sum that was the result of the Applicant's action, but the death of the deceased in the case, and severe injuries to three others.
8. The Applicant relied on **Benjamin Kahindi Changawa & Another Vs. Rep CA No. 99 of 2019** where the court of appeal reduced the death sentence to 10 years' imprisonment on grounds of the good past work record of the Appellants who were police officers at the time the incident in question occurred. This case does not apply. He also relied on appeals arising from robbery cases in **Martin Bahati Makhoha V. Rep (2018)** and **Sebastian Okwero Mrefu V Rep Petition No. 151 of 2012** where the Appellants were sentenced to the period already served.
9. The Probation report indicates that the Applicant maintained that he did not commit the offence for which he was convicted in this case. I

have considered the findings of the High Court and the Court of Appeal in this matter. Both courts held that the Applicant played double roles, first enticing the deceased to go outside where he was attacked and murdered; and the fact he too attacked the deceased as well as the other family members. His continued denial of the offence is clearly a demonstration that he is not remorseful for his actions. The denial also negates his submissions which he filed in this case in which he was stating that he was very sorry for those he hurt and those he has grieved by his actions in this case.

10. The Probation Report has mixed feelings of the family members. The deceased in this case was his brother in law, while his first co-accused was his father in law. His in laws were apprehensive of his release but were ready to forgive him. His wife and cousin are supportive of him promising to house and give him assistance once released.

11. I have considered this application for Re-sentencing. I have also taken into account the submissions by the Applicant as well as his written submissions. The Applicant has been in prison since his arraignment in court 15 years ago. The mitigation of the Applicant is also considered, including his age at time of arrest (32) and currently (47). I have considered the circumstances of the case. Very baffling that the Applicant helped his father in law attack his family, yet there was no known grudge between him and his in laws. Nevertheless, his role was pivotal, not passive.

12. Having taken all these facts and factors into consideration I find that the most appropriate sentence is 25 years from the date of arraignment before this court. For avoidance of doubt the date of arraignment was 24th May, 2005.

13. Those are the orders of this court.

DATED SIGNED AND DELIVERED THROUGH TEAMS THIS 9TH DAY OF NOVEMBER, 2020

LESIT, J.

JUDGE

In the presence of

Kinyua.....Court Assistant

Applicant in person.....present

Mr. Kibathi.....For the State

LESIT, J.

Judge