

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

PETITION NO.143 OF 2019

FRANCIS NDUNGU NJOGU.....PETITIONER

VERSES

REPUBLIC.....RESPONDENT

JUDGEMENT.

1. The petitioner was sentenced to death on **4th December 1998** pursuant to his conviction for the offence of murder. His appeal to the Court of Appeal was dismissed on **24th September 1999**. The death sentence was later commuted to life imprisonment.
2. The petitioner taking advantage of the now famous decision by the Supreme Court of Kenya in the case of **FRANCIS KARIOKO MURUATETU & ANOTHER V. REPUBLIC (2017) eKLR**, has filed this petition dated 29th January 2020 seeking that he be resentenced afresh. Although in his supporting affidavit he deposed that he was not accorded a fair trial when it came to sentencing, the same at this moment is not tenable for the reason that the then pre 2010 constitution had its own clear provisions and there was no such complain in his appeal. In any case there was no alternative sentence provided in law.
3. The applicant in his submissions has said that he has learnt his lessons in his 25 years in prison. Therein he has learned some trade including carpentry, joinery and polishing. He has risen to a level of *trustee* as per the report dated **27 January 2020** from the prison authorities.
4. The petitioner for the reasons advanced prays that he be granted another chance outside prison so as to join his two children and a wife she left behind. He has cited several recent authorities to support his petition.
5. The court as stated above does not find any reason to fault the trial court for sentencing the petitioner as it did. He was appropriately sentenced. The purpose of prison sentence is so as to as much as possible mitigate the crime and ensure commensurate punishment of the offender. In this case the deceased is long gone. The petitioner for the last 25 years has been in custody.
6. He certainly must have learned his lesson. The court is also alive to the judiciary sentencing policy principles which were captured for instance by the court in the case of **DALMAS OMBOKO ONGARO VERSES REPUBLIC 2016 eKLR** as follows;

“The principles of sentencing were summarized at page 86 paragraph B of the Judiciary Bench Book for Magistrates in Criminal Proceedings (published by the Kenyan Judiciary in 2004) as follows:

“In determining what is the appropriate sentence to mete out, the Court has to consider such factors as the nature of the offence, the attitude of the accused person, prevalence of the type of offence, the seriousness of the offence, the circumstances under which the offence was committed, the effect of the sentence on the accused person, the fact that the maximum sentence is intended for the worst offenders of the class for which the punishment is provided, etc. (Makanga v R. Criminal Appeal No. 972 of 1983 (unreported)). The Court may also consider the value of the subject matter of the charge (Mathai v R [1983] KLR 442) and whether there has been restitution of the property by the accused (Hezekiah Mwaura Kibe v R [1976] KLR 118).

The antecedents of an accused person also come into play when the Court is considering the appropriate sentence. If an accused person is a first offender the sentence ought to reflect this fact as the aim of the Court is to encourage reform and discourage recidivism”

7. Taking into consideration the above authority and many that have emanated from this court after the Muruatetu case(supra), this court finds that the petition is meritorious for the reason that the petitioner was a first offender and while in prison custody has demonstrated good industry. He is now what is called a *trustee*. He has as well learned new trades as indicated above which should be able to aid him in his new found freedom.
8. For the foregoing reasons, this court finds that the period served by the petitioner of about 25 years are sufficient punishment in the circumstances. He is hereby set free unless lawfully held. He shall however serve a probation period while out of jail of one year at the relevant probation office as shall be determined by the state agencies.
9. Orders accordingly.

Dated at Nakuru this 10th day of December 2020.

H K CHEMITEI

JUDGE.