



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL PETITION NO.4 OF 2019

ISAIAH KIPNGETICH.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Petitioner **ISAIAH KIPNGETICH** (hereafter referred to as the Petitioner) filed this petition seeking re-sentencing following the Supreme Court decision in *Petition No.16 of 2015*.

FRANCIS KARIOKOR MURUATETU & ANOTHER -VS- REPUBLIC where the Supreme Court said the mandatory nature of the death penalty is unlawful.

2. The Petitioner herein was sentenced to death on 21/4/2010 for the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code.

3. The death penalty has since been commuted to life imprisonment by the President in 2016.

4. The particulars of the charge were that on 9/11/2008 at Makiten Village in Kericho District of Rift Valley Province (now Kericho County) the Petitioner Murdered **JULIAS KIPLIMO SIGEI**.

5. A brief summary of evidence adduced in this case was that on the material day, the Petitioner and the Deceased who was the Petitioner's father had a quarrel after which the Petitioner went to his house and armed himself and attacked the Deceased with a Club (Rungu) and an Iron Bar inflicting fatal injuries on the deceased.

6. The Court found that the Petitioner first threw the Club at the Deceased but did not hit him and then he threw the Iron Bar and hit the Deceased and he proceeded to cut the Deceased on the left frontal side of the head and on the neck damaging the Spinal Code at the neck.

7. The Petitioner filed written mitigation for re-sentencing which I have considered. The Petitioner said in his Written Submissions that he is remorseful for what happened to his father and further that the unfortunate incident occurred due to a dispute over land coupled with the use of alcohol.

8. The Petitioner also stated that during his period in custody, he has learnt to be honest and law abiding and he has been reformed. He said he has acquired the following skills.

i. Certificate in Discipleship.

ii. Diploma in Discover Bible.

iii. Certificate in Financial Education for Women Youth.

9. The Petitioner further submitted that he was 37 years old during the commission of the offence and married with two children and now he is 47 years old and he is seeking a chance to raise his children.

10. The Probation Officer filed a Pre-Sentence Report on 5/11/2020 which I have considered. The Probation Officer stated that the family members of the Petitioner held a meeting with their clan members and resolved that the Petitioner be released back to the community.

11. The family members stated that the petitioner used to abuse alcohol and on the material day the incident happened, he was drunk.
12. I have considered the Petition filed by the Petitioner. The Petitioner killed his own father after an argument over land. The Petitioner states he was intoxicated.
13. I find that the Petitioner had the opportunity to raise the defence of intoxication during the trial of his case but he did not do so.
14. This petition is not an opportunity to come up with new evidence that was not availed to the trial court.
15. I find that the **MURUATETU** case did not declare the death penalty unlawful. The death penalty can still be meted in deserving cases. There are several petitions where Petitioners are seeking re-sentencing where the evidence is clear that the death penalty was merited.
16. In the current case, the death penalty has been commuted to life imprisonment and I find no reason to commute the same any further.
17. The **MURUATETU** case did not outlaw the death penalty. It only removed the mandatory nature of the death penalty.
18. I find that the life sentence which the Petitioner is serving is merited in view of the nature of the offence he committed and the circumstances of the offence.
19. The attempt by the Petitioner to raise a new defence in this petition is rejected. During the trial of this case, the Petitioner raised the defence of provocation but the trial court found that the Petitioner went back to his house after the quarrel with the deceased and armed himself and went and killed his father by inflicting fatal injuries on him. The crime was not committed at “**heat of the moment**”, the Trial Court ruled.
20. The Petitioner does not deserve to have the sentence of life imprisonment commuted any further.
21. The Petition is accordingly dismissed.
22. The Petitioner has a right of Appeal to the Court of appeal within 14 days.

Delivered, dated and signed at Kericho this 3rd day of December, 2020.

A. N. ONGERI

JUDGE