

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 4 OF 2018 [RESENTENCING]

(CORAM: R.E. ABURILI – J.)

GEORGE OCHIENG MESO.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner **George Ochieng Meso** was charged with the offence of **Robbery with Violence contrary to Section 296(2) of the Penal Code** vide **Siaya Principal Magistrate’s Criminal Case No. 568 of 2007**. He was convicted and sentenced to death on 24.4.2008. The Petitioner and two others, **Antony Odhiambo** and **Yona Otieno Waura** appealed to the **High Court at Kisumu vide Cr. Appeals No. 38, 39, 40 of 2008 (consolidated)** but the appeals challenging convictions and sentence were dismissed by a two Bench vide a judgment delivered on 2.6.2008 by Hon. J.W. Mwera – J and J. Karanja – J.

2. His appeal to the Court of Appeal was also dismissed. In the meantime, in 2009, the death sentence was commuted to life imprisonment. Following the decision in Supreme Court Petition No. **15 and 16 of 2015 Francis Karioko Muruatetu Vs. Republic on 14.12.2017**, the Petitioner now before the Court seeks for resentencing because the Supreme Court declared that death sentence was not mandatory and that albeit in appropriate circumstances the trial Court could impose death sentence as it is still lawful sentence under Article 26 of the Constitution. Further, the Supreme Court observed that the mandatoryness of death sentence deprived the trial Court the discretionary power to mete out appropriate sentence having regard to the mitigation and circumstances of each case.

3. The Petitioner has been in Prison since 2007 which is now 12 years. He has learned some life’s skills including carpentry and joinery up to Grade 3. The letter from Officer-in-charge Prisons at Kisumu Maximum Security Prison shows that the Petitioner is disciplined and is recommended for worthy overall qualifications.

4. The Court has also observed the Petitioner who pleads for leniency and custodial sentence to enable him return to his family. He also contracted epilepsy while in prison. He has a wife and Children who depended on him but are now suffering because of his “**foolishness and greed for quick wealth.**”

5. He promises to be law abiding and to teach others to work hard to earn a living. That he has reformed and can never commit such an offence again. He is apologetic to the Complainant.

6. I have examined the trial record and considered the mitigations presented. I note that the Complainant Julius Omondi Otieno who was robbed recovered some of his property and that he did not suffer serious physical injuries, although he was traumatized by the robbery. I also take into consideration the remorsefulness by the Petitioner and the fact that he has epilepsy which he got while in Prison. He has learnt his lessons as he has not benefited from his unlawful action and what he himself calls foolishness and greed. His family has also suffered because of his unlawful actions. In the premises, I exercise discretion and set aside the lawful death sentence which is not mandatory as commuted to life imprisonment. I substitute the same with a prison term of fifteen (15) years imprisonment to be calculated from the date of his arrest on 17.7.2007.

7. Orders accordingly.

Dated, Signed and Delivered in open court at Siaya this 3rd day of July, 2019.

R.E. ABURILI

JUDGE

In the presence of:

Petitioner in person

Mr. Mayaba Prosecution Counsel for the State

CA: Brenda and Modestar