

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 70 OF 2018

HUMPHREY OCHIENG ODUOR.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Petitioner was charged and convicted with the offence of murder contrary to Section 204 of the Penal Code. He was sentenced to suffer death; and has been in jail for the last eighteen (18) years. The deceased was the wife of the Petitioner. They had family issues and were separated. However, the Petitioner lured the wife back to their matrimonial home ostensibly to sort out the matter. When the deceased reported to the matrimonial home at about midday, the Petitioner attacked her using a knife, cutting her throat and dismembering her. He then buried her in an unused well behind the house.

2. Mr. Fedha for the Prosecution, who opposed the Petition submitted that this was a well calculated murder and should be punished by a sentence of forty (40) years in prison.

3. The Petitioner who appeared in person, submitted that he is a sick man and his punishment should be limited to the 18 years he has served in prison.

The Determination

4. The Petition is before the court for resentencing pursuant to the decision of the Supreme Court in *Francis Karioko Muruatetu & Another –Vs- Republic (2017) eKLR* in which the court decided that mandatory death sentence in murder cases is unconstitutional. The duty of this court now is to pass an appropriate sentence for that conviction.

5. The Petitioner submits that the 18 years he has served in prison is adequate punishment for his crime. I do not think so. The crime of murder is so grave and must be adequately punished. The circumstances in which the Petitioner killed his wife were so inhuman. It is difficult for the court to say that the Petitioner has reformed and should rejoin the society. The conduct and action of the Petitioner deserves a most deterrent punishment which in my view is 40 years in jail as submitted by the prosecution.

6. Accordingly, I hereby set aside and reverse the death sentence given to the Petitioner, and substitute it with a sentence of forty (40) years from the date of arrest.

A right of appeal is granted to be exercised within fourteen (14) days.

Dated, Signed and Delivered at Mombasa this 15th day of October, 2019.

E. K. O. OGOLA

JUDGE

In the presence of:

Mr. Fedha for DPP

Petitioner in person

Mr. Kaunda Court Assistant