



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE- J.)

CRIMINAL PETITION NO. 34 OF 2019

BETWEEN

HENRY COLLINS ODHIAMBO.....PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGMENT

1. **HENRY COLLINS ODHIAMBO** (hereinafter referred to as the Petitioner) was convicted and was on 02nd March, 2006 sentenced to death for the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code** in **Kisumu High Court Criminal Case No. 03 of 2003**.

2. Petitioner has petitioned this court for resentencing. He filed a certificate to demonstrate that he had undertaken training in carpentry and joinery and had qualified up to grade 1. He urged the court to consider that he had been in custody since his arrest in 2002.

3. Ms. Gathu, learned counsel for the state while conceding that the Petitioner was entitled to resentence submitted that the offence was committed in the most heinous manner which involved the cutting of the victim to death and urged the court to resentence the Petitioner to 25 years.

Analysis and Determination

4. At the time of the petitioner's conviction, death was the only available sentence for murder.

5. The Supreme Court decision in **Francis Kariuki Muruatetu & Another v Republic & 5 others [2016] eKLR** declaring the mandatory death sentence unconstitutional has necessitated resentencing of all persons previously sentenced to the mandatory death sentence.

6. I have considered **The Sentencing Policy Guidelines, 2016** and its application which is intended to promote transparency, consistency and fairness in sentencing (See **Michael Kathewa Laichena & another v Republic [2018] eKLR**).

7. The facts from the record shows that the attack on the deceased by the Petitioner was unprovoked and intentional.

8. Under the proviso to **section 333(2)** of the **Criminal Procedure Code (Chapter 75 of the Laws of Kenya)**, the court is entitled to take into account the period the petitioner has spent in custody in determining the sentence. The court record shows that the petitioner has served 13 years since the date of conviction.

9. After considering all the mitigating and aggravating factors, and the fact that the Petitioner has undertaken carpentry and joinery and had qualified up to grade 1 as a way of reformation, I re-sentence him to **25 years'** imprisonment from date of conviction on 02nd March, 2006.

DATED AND SIGNED IN KISUMU THIS 14TH DAY OF NOVEMBER, 2019

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistants - Amondi/Okodoi

Petitioner - Present in person

For the State - Ms. Gathu