



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 54 OF 2016

NEWTON NJOROGE..... PETITIONER

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGMENT

1. The Petitioner herein was charged and convicted with the offence of murder contrary to Section 203 and Section 204 of the Penal Code. The Petitioner subsequently lodged a first appeal before the High Court and a second appeal in the Court of Appeal.
2. Brief facts of the case are that on 14th and 15th June, 2009 at Majimboni Village, Msambweni within Coast province murdered Felix Kisila Syanda through Secondary Strangulations (Asphyxia). The Petitioner was convicted to 30 Years in Jail. Being aggrieved by the Sentence the Petitioner appealed to the Court of Appeal at Mombasa which issued Judgment on 16th October 2015 dismissing the Appeal and enhanced the sentence to Mandatory Sentence of death.
3. The Petitioner now claims that the sentencing to death by the trial court as well as the two appellate courts was an infringement of his fundamental rights. The Petitioner avers that the death sentence issued by the Court of Appeal was cruel, inhuman and degrading.
4. The Petitioner further claims that the said courts did not consider his mitigation and as such the sentence is an infringement of the Petitioner's rights under Articles 25 and Article 29 of the Constitution.

Hearing and Submissions

5. The parties filed their submissions and the Petition came up for hearing on 17th September, 2019.
6. It was the Petitioner's submissions that he is rehabilitating the prisoners in prison. He has also written a book about his condition and would wish to go out and help other people.
7. The Respondent opposed the Petition, submitting that taking into account the circumstances of the case a deterrent sentence of 30 years including the 10 years served would be sufficient.

The Determination

8. On the issue of sentence, this court relies on the Supreme Court case in **Francis Karioko Muruatetu & Another -vs- Republic [2017] Eklr declared** where the mandatory nature of the death sentence as provided for under Section 204 of the Penal Code was found to be unconstitutional. To that extent this court can now resentence the Petitioner.
9. The Petitioner committed murder and was convicted. He must understand that he caused an innocent person to lose his life. Murder must be properly punished to send a clear warning to the would be murderers that they would be severely punished. I now hereby set aside the death sentence imposed on the Petitioner and substitute the same with a jail term of thirty (30) years from the date of arrest. Right of Appeal in 14 days.

Dated, Signed and Delivered in Mombasa this 13th day of November, 2019.

E. K. O. OGOLA

JUDGE

In the presence of:

Mr. Fedha for DPP

Petitioner in person

Mr. Kaunda Court Assistant