



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISC. APPL NO.57 OF 2018

DAVID MWANGI KAMAU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. This is a ruling on **application** dated **11th May 2018** seeking an order to remit the applicant to the subordinate court for resentencing.
2. Grounds on the face of the application are that the applicant was sentenced to death and has been in custody from 18th day of December 2000.
3. The application is supported by **affidavit** sworn by the applicant herein. He averred that he was charged in Kericho **Chief Magistrate Criminal Case Number 868 of 2001** for the offence of **robbery with violence contrary to section 296(2)** of the penal code. He filed **Appeal Number 413 of 2007** but the appeal was dismissed.
4. He averred that he has mitigating factors that will alter the death sentence imposed on him by the trial court; that the length he has spent in custody is further mitigating factor to reduce his sentence; that he has undergone several trainings and received spiritual nourishment.
5. I note that a social enquiry report in respect of the applicant has been filed. The report show that the death sentence imposed on applicant was commuted to life imprisonment and he has been in prison for 16 years, report confirm that he has received vocational training in carpentry and upholstery and attained trade test grade 1 for both courses.; that he has also continued with formal education up to form 2. Enquiry report indicate that his character and conduct in prison has been good.
6. In view of the Supreme Court determination in the case of **Muruatetu** where the court held that the jurisdiction of the court in exercising its discretion should not be taken away, I am inclined to allow the applicant's prayer for resentence in respect to the 3 counts of robbery with violence.
7. I also note that the appellant was charged with 2 counts of rape in Count VI and VII. He was charged under **Section 140 of the Penal Code** which is now repealed. He was sentenced to 10 years with hard labour and 4 strokes in each count as per the repealed section of the Penal Code. Sentence was left in abeyance in view of the death sentence imposed in Count I, II and III. I will therefore impose sentence in the 2 counts of rape under **Section 3 (3) of Sexual Offences Act**.
8. I have considered his mitigating factors, nature of the offences and sentence, the appellant is sentenced as follows:
 - i. **Count I, II and III to serve 20 years imprisonment for each.**
 - ii. **For Count VI & VII accused to serve 10 years imprisonment each.**
 - iii. **Sentence in all the 5 counts to run concurrently.**
 - iv. **Sentences to start from the time the applicant was sentenced by the trial court.**

Ruling dated, signed and delivered at Nakuru this 4th day of December, 2019.

.....

RACHEL NGETICH

JUDGE

IN THE PRESENCE OF:-

Jenifer - Court Assistant

Applicant in person

Nyakira for state