



Nakusi & 2 others v Director of Public Prosecutions (Petition E004 of 2024) [2024] KEHC 6421 (KLR) (30 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6421 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
PETITION E004 OF 2024
TW CHERERE, J
MAY 30, 2024**

BETWEEN

JOHN NAKUSI 1ST PETITIONER

KENNEDY MWENDA THURANIRA 2ND PETITIONER

MOSES THURANIRA KIRIAO 3RD PETITIONER

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

RULING

1. Petitioners were charged in Meru Criminal Case No. 544 of 2016. In the 1st count of robbery with violence, Petitioners were sentenced to suffer death. In the 2nd count of rape, 1st Appellant was sentenced to serve 10 years' imprisonment. In the 3rd count of gang defilement, the 2nd and 3rd Petitioners were sentenced to serve 15 years' imprisonment.
2. Their appeal vide Meru Criminal Appeal No. 32 of 2015 was dismissed on 09th November, 2022 and they did not appeal to the Court of Appeal.
3. Petitioners seek resentence in count 1 following the Supreme Court decision in *Francis Karioko Muruatetu & 5 Others v Republic*, Petition No. 5 of 2015 (2017) eKLR where the said superior court held that the mandatory death sentence for the offence of murder as provided in Section 204 of the *Penal Code* is unconstitutional as it deprives courts of their inherent jurisdiction not to impose a death sentence in an appropriate case.
4. Respondent opposed the resentence and urged the court to consider the aggravating factors in this instance which are the serious nature particularly that Petitioners were armed with dangerous weapons among them a gun and they not only robbed the complainant but also raped her and defiled her 14-year-old daughter.



5. I have considered the verdict in *Maingi & 5 others v Director of Public Prosecutions & Another* (Petition E017 of 2021) [2022] KEHC 13118 (KLR) (Odunga J. as he then was) and *Edwin Wachira & Others v Republic* – Mombasa Petition No. 97 of 2021, Mativo J. (as he then was). The rationale behind the decisions is pegged to the fact that a minimum mandatory sentence takes away the jurisdiction conferred on judicial officers to exercise their discretion when meting out sentence.
6. Taking all these factors into consideration, the nature of the offence and the circumstances under which it was committed, the death sentence is substituted with a thirty (30) years' imprisonment term.
7. The sentences in count 1 shall accordingly be computed concurrently with the sentences in counts 2 and 3.

DELIVERED AT MERU THIS 30TH DAY OF MAY 2024

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

1st Petitioner - Present in person

2nd Petitioner - Present in person

3rd Petitioner - Present in person

For DPP - Ms. Rotich (PC- 1)

