



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 50 OF 2018

ISAIAH KISUR KURINYANGPETITIONER

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGMENT

1. The Petitioner herein was charged and convicted with Murder contrary to Section 203 as read with Section 204 of the Penal Code in Eldoret High Court Criminal Case No. 1 of 1998 and sentenced to death. The Petitioner subsequently lodged an appeal before the Court of Appeal in Nakuru which was dismissed.

2. Brief facts of the case are that on 22nd April, 1997 at Lomut Trading Centre in West Pokot District within Rift Valley Province murdered Purity Chepkoech Rotino using a gun.

3. The Petitioner now claims that the sentencing to death by the trial court as well as the appellate court was an infringement of his fundamental rights. The Petitioner avers that the said courts interpreted the provisions of Section 204 of the Penal Code to mean that death sentence was the only sentence available to the Petitioner and that the said courts held the view that the death sentence under the said provisions was mandatory and that no other sentence was tenable.

Hearing and Submissions

4. The matter came up for hearing on 31st July, 2019.

5. It was the Petitioner's submissions that he was convicted in 2000 when he was 26 years and has been in prison for 22 years. That he has children who are now adults and are being discriminated as they cannot inherit their ancestral land and wishes to be released as he has now reformed.

6. The Respondent (DPP) through its Counsel Mr. Fedha submitted that the Petitioner has served 22 years and prayed for a total of 40 including the years served due to the circumstances surrounding his charge.

The Determination

7. On the issue of sentence, the Supreme Court in **Francis Karioko Muruatetu & Another -vs- Republic [2017] eKLR** declared the mandatory nature of the death sentence as provided for under Section 204 of the Penal Code to be unconstitutional. To that extent this court only has to resentence the Petitioner.

8. I have perused the Petitioner's Progress Report. I have also considered Petitioner's mitigation. The crime that was committed by the Petitioner is very grave. However, it is not the duty of this court to revisit evidence that was tendered in the trial court. It is evident that the Petitioner has reformed going by the positive remarks issued by the Prison Officers. For the foregoing reasons I hereby set aside the death sentence imposed on the Petitioner by the trial court. Instead thereof I jail the Petitioner for a term of 35 Years from the date of arrest.

9. Right of Appeal within 14 days.

Dated, Signed and Delivered at Mombasa this 18th day of December, 2019.

E. K. O. OGOLA

JUDGE

In the Presence of:

Ms. Mutua for DPP

Petitioner in person

Mr. Kaunda Court Assistant



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