REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

CRIMINAL PETITION NO.E014 OF 2021

1. AMOS OMANYALA MUNYEGENYE

2. KAROLI SANDE SOKONI

3. CHRISTOPHER EKESA MUNYEGENYE.....….....PETITIONERS

VERSUS

REPUBLIC …….....…..RESPONDENT

R U L I N G

[1] This court did not have the benefit of perusing the original record and had to rely solely on the copies of proceedings supplied by the applicants, **Amos Omanyala Munyegenye**, **Karoli Sande Sokoni** and **Christopher Ekesa Munyegenye**, who were convicted and sentenced to death for the murder of Barasa Omanyala Ekine on 20th November 2018, at Lupida, Bukhayo West Busia County, formerly District.

The court rendered its judgement on 9th June, 2015 and sentenced the applicants on the 24th June 2015, after taking into consideration the pre-sentence reports and the applicants' mitigation. Their appeal to the Court of Appeal was dismissed on 31st January 2020, and in the month of February 2021, they filed a notice of motion and a joint petition praying essentially for re-hearing the matter on sentence on the basis of the decision of the Supreme Court of Kenya in the care of **Muruatetu & Another Vs Rep (2018) eKLR** and on the basis that both the trial and appellate courts violated that Constitutional rights under **Article 50** (**2**) (**g**) by not according them a fair hearing on sentencing.

[2] The matter proceeded herein by way of written submissions which were filed by the second and third applicants (i.e **Karoli** and **Christopher**) but not the first applicant (**Amos**). However, they all seemed to rely on similar arguments in support of their application. The respondent in opposition to the application filed its submissions through the office of the Director of Public Prosecution (**DPP**).

Upon due consideration of the application on the basis of the supporting grounds and the rival submissions, it is clear that the applicants misunderstood the import of the Muruatetu decision which merely outlawed the mandatory nature of the death sentence but not the sentence itself. So that, if the circumstances allowed those convicts affected by the then mandatory nature of the offence could apply to the court which passed the sentence for a review of the same upon hearing the applicant in mitigation. This was meant to give the court the discretion to impose any other sentence in appropriate or deserving cases. Otherwise, the court would still retain the liberty to impose or affirm the death sentence if circumstances of the case permitted.

[3] In the present case, the applicants already had the opportunity to have the death sentence reviewed when they preferred an appeal to the Court of Appeal which in affirming the death sentence imposed by this court as the trial court noted as follows:-

"**Considering the manner in which the murder was committed, and all the surrounding circumstances, it seems clear that the offence was calculated. It was cruel and heinous and done with the intention to not only them (sic) but kill and obliterate the deceased. They also badly injured PW 1. They exhibited extreme impunity.**"

[4] It must also be noted that even before imposing the death sentence, the trial court considered the pre-sentence reports and the applicants' mitigation but still imposed the sentence after finding that the information provided by dint of the pre-sentence report and the mitigation factors could not impede the imposition of the then mandatory sentence. Now that the applicants have had more than enough opportunities for review of the death sentence imposed upon them by the trial court but which was later committed to life imprisonment by presidential clemency and given the circumstances under which the offence was undertaken by themselves and others this court finds no good reason to interfere with the sentence in the manner prayed by the applicants. They do not deserve exercise of discretion in their favour considering the violent and macabre manner in which they executed their criminal transaction against their own relative. This ruling is for them the end of the road in their attempt to try and escape from the consequences of their unlawful action. They have completely failed to demonstrate that the impugned sentence ought to be reviewed in their favour if not set aside altogether. They have also failed to demonstrate that both the trial court and the appellate court violated their constitutional right to fair trial by failing to impose a sentence other than the death sentence despite their respective mitigation.

[5] In sum, this application is devoid of merit and is hereby dismissed in its entirety.

Orders accordingly.

J.R. KARANJAH

J U D G E

[Read & signed this **18TH** day of **NOVEMBER 2021**]