



**Salala v Republic (Criminal Petition E055 of 2021)
[2022] KEHC 15678 (KLR) (28 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15678 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL PETITION E055 OF 2021
JN KAMAU, J
NOVEMBER 28, 2022**

BETWEEN

STEPHEN ONYANGO SALALA PETITIONER

AND

REPUBLIC RESPONDENT

(High Court HCCRA No 76 of 2013)

JUDGMENT

INTRODUCTION

1. The petitioner herein was tried and convicted for the offence of robbery with violence contrary to section 296 (2) of the *Penal Code*. He was sentenced to death which was later commuted to life imprisonment by the President in the year 2016.
2. Being dissatisfied with the said decision, he lodged an appeal in the High Court HCCRA No 76 of 2013. The same was dismissed in its entirety and his conviction and sentence upheld.
3. On October 26, 2021, he filed this petition for review of the sentence pursuant to the decision of the Supreme Court Petition No 15 of 2015. In his affidavit in support of his application, he stated that the decision in the case of *Francis Karioko Muruatetu & another vs Republic* [2017] eKLR declared the death sentence unconstitutional.
4. In his written submissions that were filed on October 26, 2021, he submitted that he was not challenging conviction but his death sentence which was later commuted to life imprisonment. He pointed out that he had undergone vocational training and had acquired skills in carpentry in grades I, II and III which had placed him in the best position to be self-reliant and enable him integrate well back to society.



5. He asserted that during his arrest, he was a family man vested with the responsibility of taking care of his young family who to date have adversely missed his fatherly support.
6. He urged the court to consider granting him a global figure of eight (8) years imprisonment. In this regard, he relied on the case of *Sebastian Okweru Mrefu vs Republic* Miscellaneous Criminal Application No 151 of 2012 (eKLR citation not given) where the court held that a court could review the sentence even if a petitioner's appeal had been dismissed. He submitted that each case had to be determined according to its own circumstances
7. On its part, the state opposed his petition for the reason that the decision on constitutional validity of mandatory death sentence which was made in *Francis Karioko Muruatetu & another vs Republic* (*supra*) only related to murder cases. It was emphatic that the said decision did not invalidate the mandatory sentences or minimum sentences in the *Penal Code*, the *Sexual Offences Act* or any other statute.
8. It pointed out that the matter at hand was a robbery with violence which did not fall under the ambit of the case of *Francis Karioko Muruatetu & another vs Republic* (*supra*). It added that even if the petitioner had not based his petition on the aforesaid case, there was overwhelming evidence against him and that was why his appeal was dismissed.
9. It urged the court to dismiss the Petition and uphold the conviction and sentence.

Legal Analysis

10. On July 6, 2021, the Supreme Court of Kenya gave guidelines in the case of *Francis Karioko Muruatetu & another vs Republic* (*supra*) to the effect that the said decision only applied in respect to sentences of murder under sections 203 and 204 of the *Penal Code* and was not applicable to capital offences such as treason under section 40 (3), robbery with violence under section 296 (2) and attempted robbery with violence under section 297 (2) of the *Penal Code*.
11. Notably, the holding in the case of *Francis Karioko Muruatetu & another vs Republic* (*supra*) was inapplicable herein as the petitioner had been charged and convicted of the offence of robbery with violence.
12. The fact that he was rehabilitated and had acquired vocational skills in carpentry could not assist him for the reason that he had not been charged and convicted of the offence with murder. His prayer therefore fell by the wayside.
13. His prayer to consider the provisions of section 333(2) of the *Criminal Procedure Code* cap 75 (laws of Kenya) were inapplicable herein as the death sentence was still in place.

Disposition

14. For the foregoing reasons, the upshot of this court's decision was that the petitioner's petition for review of sentence that was lodged on October 26, 2021 was not merited and the same be and is hereby dismissed.
15. It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 28TH DAY OF NOVEMBER 2022

J. KAMAU

JUDGE

