



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

PETITION NO. 95 OF 2020

GEORGE MURIITHI KAARI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The petitioner herein has moved this court by way of a petition dated the 2nd day of November, 2020 in which he has sought this court's intervention in sentencing as per the Supreme Court directive in Petition No. 15 of 2015. The grounds in support of the application are that;

- i. The sentence imposed by the trial court is inconsistent with Articles 25(b) and 50 of the Constitution of Kenya.
- ii. That the imposition of a mandatory death penalty constitutes a cruel and inhuman treatment.
- iii. Section 296(2) of the Penal Code is inconsistent with Article 50(2) of the Constitution.
- iv. That his constitutional rights were highly violated in sentencing him to death.

2. The petitioner herein was charged with the offence of Robbery with violence contrary to Section 296(2) of the Penal Code in Criminal Case No. 492 of 2013 at Runyenjes and he was sentenced to suffer death. He approached the High Court at Embu, in Criminal Appeal Case No. 1 of 2014 but his appeal was dismissed.

3. He moved to the Court of Appeal at Nyeri in Criminal Appeal No. 47 of 2015 and the Court of Appeal referred the case back to the High Court for retrial but he later withdrew the appeal.

4. At the hearing of the application, he prayed that he be given a definite sentence adding that he is remorseful.

5. On her part, counsel for the respondent did not oppose the review of the sentence but urged the court to consider the circumstances under which the robbery was committed and also take into account the seriousness of the offence.

6. The court has considered the petition and the submissions by the petitioner and the learned counsel for the respondent.

7. The offence of robbery with violence is provided for in Section 296(2) of the Penal Code and in the event of being found guilty, the only sentence provided thereunder is death. On appeal in the High Court, the sentence of death was upheld after the court dismissed the appeal. The judgment of the High Court was delivered on the 26th day of May, 2015. At the material time both the trial court and the High Court did not have jurisdiction to impose a lesser sentence than that provided for under Section 296(2).

8. However, with the Supreme Court's decision in **Petition No. 15 of 2015 Francis Karioko Muruatetu & Another Vs Republic**, the position changed when the Supreme Court declared Section 204 of the Penal Code unconstitutional for taking away the court's discretion in sentencing.

9. In the case herein, the petitioner was sentenced to a mandatory sentence of death and his trial and appeal were heard before the decision in the **Muruatetu case** was given by the Supreme Court.

10. In the circumstances, he is entitled to the benefits that came along with that land mark decision. The court has considered his submissions to the effect that he is remorseful and his plea for leniency. However, the court has also considered the circumstances under which the

offence was committed and the seriousness of the offence.

11. Taking all these factors into consideration, the sentence of death imposed by the trial court and upheld by the High Court, is hereby set aside and substituted with a sentence of 20 years imprisonment.

12. It is so ordered.

Delivered, dated and signed at Embu this 27th day of January, 2021.

L. NJUGUNA

JUDGE

.....for the Applicant

.....for the Respondent