



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

PETITION NO. 139 OF 2018

OMAR BAKARI.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT

1. The Petitioner herein **Omar Bakari** was convicted and sentenced to suffer death for the offence of robbery with violence contrary to section 296 (2) of the Penal Code.
2. The particulars being that on the 12th day of October, 2007 at around 6:15 pm at Kisauni Msikitini stage Mombasa County jointly with others not before the Court and while armed with dangerous weapons namely pangas, robbed **MERCY ACHIENG SABANA** of a handbag containing mobile phone make safaricom 225, perfumes, National Identity card and cash Ksh. 5,000/= all valued at Kshs. 15, 000/= and at or immediately before or immediately after the time of such robbery used actual violence to the said **MERCY ACHIENG SABANA**.
3. The Petitioner filed appeal to the High Court which was dismissed on 19/2/2014. The Petitioner is now in this court pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Another vs. Republic [2017] eKLR** in which the apex court held that the mandatory nature of the death penalty is unconstitutional. This court therefore has the jurisdiction to resentence the Petitioner.
4. The Petitioner in mitigation urged the Court to forgive him, that he was remorseful, and that he has reformed and has learnt carpentry which will enable him to be gainfully employed in a free society.
5. On her part Ms. Balongo, the learned prosecutor submitted that the offence committed by the Petitioner was grave and that he should be punished by imprisonment of 20 years in jail.
6. I have considered the petition and mitigation by the Petitioner. Robbery with violence is a serious offence against the public and the individual and when proved must be adequately punished. The Petitioner has served 12 years in prison. In the nature of the offence and how it was committed, and having heard the Petitioner in mitigation, and also having considered all aggravating circumstances, I am satisfied that a jail term of seventeen (17) years is adequate punishment for the crime.
7. I therefore make the following orders:

(a) I set aside the death sentence imposed upon the Petitioner by the trial court.

(b) In place thereof I herewith jail the Petitioner to a term of seventeen (17) years from the date of conviction.

Right of appeal in 14 days.

Dated, Signed and Delivered at Mombasa this 26th day of January, 2021.

E. K. OGOLA

JUDGE

Judgment delivered via MS Teams in the presence of:

Petitioner in person via video link

Mr. Fedha for DPP

Ms. Peris Court Assistant