

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 189 OF 2018 CONSOLIDATED WITH

PETITION NO. 237 OF 2019

SHARITI JUMA KUSHINDA.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein **Shariti Juma Kushinda** was charged with the Offence of robbery with violence contrary to Section 296 (2) of the Penal Code.
2. The particulars of the offence were that on the 2nd day of June 2000 at 4.00 p.m. at Pogwe Village Diani Tiwi in Kwale District within Coast Province, jointly with others not before court being armed with offensive weapon namely knife robbed Mariam Mwajabuni a wrist watch make quartz and 1 kg of meat all valued at Kshs. 2,150/= and at or immediately after the time of such robbery threatened to used actual violence to the said Mariam Mwajabuni. He was convicted and sentenced to suffer death.
3. His appeal to the High Court and Court of Appeal were both dismissed and sentence upheld.
4. 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 found the mandatory nature of the death sentence unconstitutional.
5. When the matter came for resentencing, Mr. Fedha, learned prosecutor submitted that the Petitioner, having served 19 years in jail, should be jailed for the time served. I have accepted the submission by the learned prosecutor. The Petitioner has served adequate time. He is also remorseful and now states that he shuns crime.
6. I therefore hereby set aside the death sentence imposed on the Petitioner by the trial court. Instead thereof I jail the Petitioner for the time served, with the result that the Petitioner is hereby set free and released from prison unless otherwise lawfully held.
7. This Judgment applies to both Petition No. 189 of 2018 and Petition No. 237 of 2019.

Dated, Signed and Delivered at Mombasa this 21st 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