

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

MISC. APPLICATION NO. 40 OF 2019

DANIEL MUNUVE MUNYITHYA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. **Daniel Munuve Munyithya**, the Petitioner herein was charged with the offence of Robbery with violence contrary to **Section 296 (2) of the Penal Code vide Mwingi Senior Resident Magistrate’s Court Criminal Case No.698 of 2009**. He was convicted after trial and sentenced to serve death sentence. His subsequent appeals to the High Court and Court of Appeal bore no fruit and having exhausted all options open to him, he has now moved this court vide this petition for resentencing following the Supreme Court decision in the case of **Francis Karioko Muruatetu**.

2. The **Petitioner** states that he has been in jail now for 12 years since the time he was arraigned. He further alleges that he got involved with bad company and seeks leniency from this court.

3. It is true that following the Supreme Court’s decision in the case of **Francis Karioko Muruatetu [2017] Eklr**, the mandatory nature of prescribed sentence is no longer binding to a trial court. A trial court has a discretion to hand out any other appropriate sentence as it deems fit.

4. The petitioner avers that he has reformed and he is remorseful. There are however no supporting documents to show the extent of his reformation and whether he had learnt skills that will endear him well with the society in order to avoid falling into the wrong company.

5. This court finds that while the petitioner has made a good case for resentencing, he has not clearly demonstrated that he has reformed well enough. I will therefore set aside the death sentence imposed by the lower court on 19th October 2011. In its place the petitioner/applicant is hereby sentenced to serve 18 years in prison. Since he has already spent 9 years in prison plus the 3 years he spent in custody while on trial, he shall now serve 6 year in jail to give him adequate time to reform and transform in order to be useful to the society once released.

Dated, Signed and Delivered at Kitui this 19th day of January, 2021.

R.K. Limo

JUDGE