

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 177 OF 2019

BAKARI RASHID.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT

1. The Petitioner was charged and convicted for the offence of robbery with violence contrary to Section 296 (2) of the Penal Code and was sentenced to death in Mombasa Criminal case no. 4231 of 2006. His appeal to High Court was dismissed.
2. The Petitioner is now in this court for resentencing pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Another v Republic [2017] eKLR** in which the Apex Court found that the mandatory nature of the death sentence to be unconstitutional.
3. I have considered submissions on resentencing both from the Petitioner and from the Director of Public Prosecutions. The Petitioner has been in jail for fifteen (16) years now. He submits that he has reformed, he is remorseful, and he is rehabilitated. Therefore, he should be set free so that he can be reintegrated back to society.
4. On her part, learned Counsel **Ms. Anyumba** for the DPP submitted that taking into account the circumstances of this case and the fact that the victim was not physically harmed at the time of the robbery, the petitioner ought to be jailed for the time already served.
5. I have carefully considered these submissions. The objective of sentence is to meet out proper retribution for the offence. It also aims at reforming the convict.
6. The Petitioner appears to me to be remorseful of his past. The 16 years he has spent in jail is not a short time. During that time, I believe he has had a chance to reflect on his life. I am satisfied that the 16 years already served by the Petitioner is adequate punishment for the crime he was convicted for.
7. I therefore hereby set aside the death sentence imposed upon the Petitioner. Instead, thereof I sentence the Petitioner to serve the term he has already served. The result is that the Petitioner is hereby released and set free unless lawfully withheld.

That is the Judgment of the Court.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 23RD DAY OF MARCH, 2021.

E. K. OGOLA

JUDGE

Judgment delivered via MS Teams in the presence of:

Petitioner in person

Ms. Anyumba for DPP

Ms. Peris Court Assistant