



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL AND JUDICIAL REVIEW DIVISION

PETITION NO. 33 OF 2017

SMM alias J

SALIM ABRAHAM LIWALI.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioners herein, were charged and convicted, together with others, with the offence of robbery with violence contrary to **Section 296 (2)** of the **Penal code**.
2. Their appeal to Court of Appeal was dismissed on **14/10/2016**. The Petitioners are now in this court for resentencing pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Another v Republic** that the mandatory nature of the death sentence is unconstitutional.
3. Both the Petitioners states that at the time of their arrest they were 26 years old and they have been in prison for **12 years now**. They aver that they are remorseful, they regret the crimes they committed, and they promise never to repeat the crimes if they are given a chance to be reintegrated back to society. The Petitioners submitted that they are reformed, having attended several rehabilitation programmes and being awarded Certificates in Para legalism, Alternative to Violence and National Aids & STI Control Programmes, Red Cross and Voice of Prophecy. Therefore, they should be resentenced for the time served, and be set free. The 1st Petitioner further submitted that he is HIV Positive while the 2nd Petitioner submitted that he suffers from a kidney problem.
4. **Mr. Fedha**, Learned Counsel for the prosecution submitted that taking into account the circumstances of the case and since the Petitioners were armed with a pistol during the robbery and that the complainant was blindfolded and left in the forest, a deterrent sentence of 14 years including time serve would be adequate.
5. The Prison Progress Report filed on behalf of the 2nd Petitioner speaks well of him. That for the 12 year served, he has reformed, he is remorseful, and he is ready to be reintegrated back into the society.
6. I have considered these submissions. The purpose of sentencing is to achieve parity in justice. It is a process also through which an offender is granted time to reflect upon his or her conduct, and to reform. It also serves as retribution so that the victim is also vindicated.
7. The Petitioners were armed with a pistol when they were involved in robbery. By chance, no one was injured. That is not an acceptable conduct. Consequently, I am satisfied that the **12 years** already served by the Petitioners is adequate punishment for the crime they were convicted for. The Court hereby sets aside the death sentence meted on the Petitioners by the trial court.
8. The Petitioners are therefore herewith forthwith released and set free unless held for valid reasons.
9. Right of appeal to be exercised within fourteen (14) days.

That is the Judgment of the Court.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 18TH DAY OF MARCH, 2021.

E. K. OGOLA

JUDGE

Judgment delivered via MS Teams in the presence of:

Mr. Fedha for State

Petitioner in person

Ms. Peris Court Assistant