



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**PETITION NO. 86 OF 2018**

**KATANA MWADZOMBO.....PETITIONER**

**VERSUS**

**THE DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT**

**JUDGMENT**

1. The Petitioner/Applicant herein **Katan A Mwadzombo** was charged, tried and convicted of the offence of Robbery with violence contrary to Section 296(2) of the Penal Code vide Kwale Criminal Case No 581 of 2006 and sentenced to death.

2. Aggrieved by the conviction and death sentence imposed, the Petitioner filed an appeal vide Mombasa High Court Criminal Appeals No 136 of 2006 and further at the Court of Appeal in Malindi COA Criminal Appeal no 487 of 2010 which appeals were heard and dismissed.

3. The Petitioner is now before this court seeking for review of the sentence which was later commuted to life imprisonment. He prays for a review of the life imprisonment sentence to 20 years imprisonment. He stated that he had already been in custody for 18 years. The petitioner placed reliance on the case of **Kubera Chilo Kuto Versus Republic** and in **Douglas Mthaura Ntoribi Versus Republic Meru High Court Criminal Case No 4 of 2015** where sentences for both accused persons were reduced.

4. In his mitigation the Petitioner stated that he was arrested in 2004 at the age of 23 years and had spent over 15 years in prison. That he was remorseful of having committed the offence and was ready to be absorbed back into the society having reformed and attained useful skills of vocational training in bible studies and asked the court to consider the period served as was in **Akimu Azed Wakoli Versus Republic Siaya Petition No 16 Of 2018**

5. The Respondent on the other hand submitted that the sentence should be reduced to 30 years in oral submissions made before this court on 22/6/2021.

6. It is noteworthy that the authorities relied upon by the Petitioner were as a result of the holding of the Muruatetu Case and which had further been adopted by the Court of Appeal in all offences that had mandatory sentences which included robbery with violence and sexual offences. However, the Supreme Court has now, through directions given on 6/7/2021 made it clear that the Francis Muruatetu decision is only applicable in Murder cases and inapplicable to other cases where the law provides for mandatory sentences. The Supreme Court stated inter alia:

***“To clear the confusion in regard to the mandatory death sentence in offences other than murder, we direct in respect of other capital offences such as treason and robbery with violence, that a challenge of those sentences should be properly filed in court”.***

7. The court further said that the cases filed should be presented and fully argued before the High Court and escalated to the Court of Appeal, if necessary, at which a similar outcome as Muruatetu may be reached. It stated:

***“Muruatetu cannot be the authority for stating that all the provisions of the law prescribing mandatory or minimum sentences are inconsistent with the constitution,”***

8. From the foregoing, the Petitioner herein is locked out from agitating this petition based on authorities that heavily relied upon the final orders in the Muruatetu case on mandatory sentences.

9. The upshot is that the petition lacks merit and is hereby dismissed.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 30TH DAY OF SEPTEMBER, 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