



THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 52 OF 2018

KAZUNGU KAHINDI..... PETITIONER

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGMENT

1. The Petitioner herein was charged and convicted for the offence of robbery with violence contrary to Section 296(2) of the Penal Code. The particulars beign that on 15/12/1995 at about 10 p.m. in Kisauni, Mombasa violently robbed James Kyule of Kshs. 30,000/= and immediately after injured him using a machete (panga) inflicting severe injuries on the face and hands.
2. The matter proceeded and the accused was convicted and sentenced to death by the trial court in Criminal Case No. 4689/1995.
3. Being aggrieved by the conviction and sentence the Petitioner appealed to the Court of Appeal at Mombasa in Criminal Appeal No. 97 of 1999. The said appeal was dismissed.
4. The Petitioner is now in this court for resentencing pursuant to the Supreme court decision in **Francis Karioko Muruatetu & Another vs. Republic [2017] eKLR** in which the apex court declared the mandatory nature of the death sentence unconstitutional.
5. Mr. Fedha, learned counsel for the prosecution submitted that the Petitioner attacked the complainant armed with a panga and injured the complainant's hand. He used force to steal the day's collection from the victim and that he should be jailed for 28 years including the 24 years he has served in jail.
6. On his part the Petitioner submitted that the has reformed and shuns crime and that he should be jailed for the 24 years he has already served in jail.
7. I have considered the Petitioner's mitigation and prosecution's submissions. I have also considered the Social Inquiry Report filed here on 6/9/2019 which speaks well of the Petitioner and recommends that he be given a second chance in the community. Be that as it may I think the Petitioner has paid for his crime for the 24 years he has been in jail. I therefore hereby set aside the death sentence given to the Petitioner by the trial court, and in place thereof I sentence the Petitioner to serve a jail term of 24 years from the date of arrest.
8. Since the Petitioner has already served the said 24 years, he is hereby forthwith released to freedom unless lawfully withheld.
9. Right of appeal in 14 days.

Dated, Signed and Delivered at Mombasa this 30th day of January, 2020

E. K. O. OGOLA

JUDGE

In the presence of:

Mr. Fedha for DPP

Petitioner in person

