

THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 46 OF 2015

MUTINDA WAMBUA KIOKO.....PETITIONER

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGMENT

1. The Petitioner herein was jointly charged with six counts of the offence of robbery with violence contrary to Section 292(2) of the Penal code in counts I, II, III, IV and V respectively. That on the night of 9th and 10th May, 2003, the Petitioner and others waylaid, attacked and robbed passengers arriving from different destinations in Taveta. The Petitioner was convicted and sentenced to death.
2. The Petitioner is now in this court pursuant to the Supreme court decision in **Francis Karioko Muruatetu & Another vs. Republic [2017] eKLR** in which the apex court made a finding that the mandatory nature of the death penalty is unconstitutional.
3. The Petitioner had attacked two ladies who had alighted from a public service vehicle and stole from them personal effects. Between 1.30 a.m. to 2.30 a.m. the Petitioner moved to a different spot where again he stopped two men and attacked them and robbed them of money and personal effects.
4. the Petitioner submitted that he should be jailed for the 16 years he has already served in prison.
5. On his part Mr. Fedha, learned counsel for the DPP submitted that the Petitioner is not remorseful and should be jailed for 28 years including the 16 years already served.
6. I have considered the said submission. On 11/3/19 this court directed the Probation Officer to file a Social Inquiry Report on the Petitioner. That report was filed on 19/9/19. The report does not recommend an early release of the Petitioner. The report notes that the Petitioner is not remorseful, is still hostile and has not reformed to deserve an early release. The report further notes that the community from which the Petitioner comes is still very hostile to him and may harm him because the Petitioner used to be involved in a series of robberies.
7. Be that as it may, the Petitioner is entitled to a fair assessment. After considering everything this court sets aside the death sentence meted on the Petitioner, and in place thereof the Petitioner is hereby sentenced to serve a term of twenty two (22) years in prison from the date of arrest.
8. 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

Mr. Kaunda Court Assistant