



**REPUBLIC OF KENYA**

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

**CONSTITUTIONAL CRIMINAL PETITION NO. 3 OF 2020**

**(CORAM: R. E. ABURILI - J.)**

**PATRICK OMONDI OPONDO.....APPLICANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

***(Being an Application for Revision of Sentence and Conviction in Kisumu HCRA 134/2012 and Originally from SPM's court, Siaya vide Criminal Case No. 525 of 2011 before Hon. R.B. Ngetich)***

**JUDGMENT**

1. The Petitioner was convicted of the offence of robbery with violence and sentenced to suffer death by Hon. R.B. Ngetich SPM (as she then was on 19/12/2012 *vide Siaya PM Cr. Case No. 525/2011*).
2. He appealed to the High Court at Kisumu vide HCRA 134/2012 which appeal was dismissed and he appealed further to the *Court of Appeal vide CA CRA NO.10/2014* which appeal was dismissed on 27/5/2016.
3. The Petitioner seeks for resentencing vide this Petition pursuant to the *Francis Muruatetu decision SC Pet. Nos. 15 & 16 of 2015* (consolidated) as he was handed maximum mandatory death penalty which the Supreme Court in the above case declared unconstitutional. The death penalty was later commuted to life imprisonment by His Excellency the President.
4. The Petitioner submits that he regrets the offence, prays for leniency and that he has reformed. Certificates shown to the court show that he was trained in Theology at Discovery Bible School and has a certificate in Health Education and counselling having trained in Mind Education Training. He has served about 10 years in prison.
5. The State acknowledges that the Petitioner has reformed and that he can be given an opportunity to serve custodial sentence but that the offence is heinous requiring deterrent sentence.
6. I have considered the Petition, submissions, testimonials and response by the State. I have also considered circumstances under which the offence was committed, the value of the property stolen and the nature of injuries sustained by the complainant. I have given equal consideration to the mitigation by the Petitioner.
7. The offence of robbery with violence is prompted by greed, reaping where one has not sown and in the process threatening life and limb. It is a heinous crime.
8. However, the Petitioner has shown remorse and reform. He is rehabilitated through life's skills learnt in prison as shown by certificates filed in court.
9. The complainant did not sustain serious injuries. The injuries were classified as harm and the weapon used in the robbery were not as lethal. They used clubs and rungs to assault and threaten the complainants. I am in the circumstances satisfied that the Petitioner who readily accepts his mistakes and admits the offence and promises not to reoffend, deserves a chance back into the society.
10. Accordingly, I allow the Petition for resentencing and vacate the mandatory death sentence as commuted to life imprisonment and substitute it with a prison term of ten years to be calculated from the date of his conviction and sentence on 19.12.2012.
11. Orders accordingly.

**Dated, signed and delivered at Siaya, this 27<sup>th</sup> day of January, 2020.**

**R.E. ABURILI**

**JUDGE**

**In the presence of:**

Patrick Omondi Opondo, Petitioner in person

Mr. Okachi, Senior Principal Prosecution Counsel

Court Assistants: Brenda Achieng and Modestar Mutiemani