



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 47 OF 2017

HAMISI MANGALE BUREHE.....PETITIONER

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS....RESPONDENT

JUDGMENT

1. The Petitioner was charged and convicted for 8 counts of robbery with violence contrary to Section 296(2) of the Penal Code in Criminal Case No. 1396 of 2007 Kwale. He was charged together with others. Upon conviction he was sentenced to death. The Petitioner has exhausted all his appellate rights by his appeals being dismissed, and he is now in this court for purposes of resentencing pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Another vs. Republic [2017] eKLR** in which the apex court decided that the mandatory nature of the death sentence is unconstitutional.

2. The Petitioner was convicted of attempted robbery with violence, attempted murder, causing grievous harm, breaking into a dwelling house and committing a felony, assault and handling stolen property. These crimes were all committed on different dates in June, 2007 on different victims while armed with axe, pangas, knives and pliers.

3. The Petitioner and his colleagues also gang raped the wife of the complainant. Mr. Fedha, learned counsel for the Director of Public Prosecution submitted that these offences were very grave and should be punished by a sentence of 45 years including the 12 years already served in prison.

4. On his part the Petitioner submitted that he was remorseful and that he was misled by alcohol. The Petitioner submitted that he has now reformed and asked for forgiveness and submitted that he should be jailed for 15 years from the time of arrest.

5. I have considered the petition and submissions. The crimes committed by the Petitioner were grave, and included gang rape of the victim's wife. These are not small crimes. This Court must send a clear message that crime does not pay. I have considered also the prison progressive report. The Petitioner is now 38 years old and has spent 12 years in jail. This court has the jurisdiction to resentence the Petitioner. I therefore make the following orders:

(i) I set aside the death sentence imposed on the Petitioner by the trial court.

(ii) Instead thereof I hereby jail the Petitioner to twenty Four (24) years from the date of arrest.

6. Right of appeal in 14 days.

7. That is the Judgment of the Court.

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

E. K. O. OGOLA

JUDGE

In the presence of:

Ms. Mwangeka for DPP

Petitioner in person via video link

Mr. Kaunda Court Assistant