



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**PETITION NO. 110 OF 2018**

**HASSAN JUMA MWASORO....PETITIONER**

**AND**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

1. The Petitioner was convicted for the offence of Robbery with Violence contrary to Section 295 as read with 296(2) of the Penal Code and sentenced to death in Mombasa CR Case No. 3071 of 1997. He appealed in HCCRA NO. 327, 309 & 316 OF 1998 and Criminal Appeal. No. 174 of 2000. Both appeals were dismissed and sentence upheld.

2. The Appellant has now petitioned this court for review of sentence in view of the Supreme Court declaration in **Francis Kariokor Muruatetu & Another vs. Republic SCK Pet. No. 15 of 2015 [2017] eKLR**.

**Brief Circumstance of the offence**

3. The particulars are that on the evening of 3<sup>rd</sup> October, 1997 at about 7 p.m. in Kwale District of the Coast Province the Petitioner together with others attacked, robbed and killed J. A. That the Petitioner was someone known to the deceased's daughter and while she was in the Kitchen cooking using a lantern the Petitioner and two other men went and sat with her mother at the verandah. She served them and after they had eaten they called her mother to give them money to buy cigarettes. They followed her to her bedroom, tied her with a rope and subsequently strangled her to death and then took her small black radio, handbag, iron box and a panga and subsequently raped the daughter and severely cut her with a panga on both sides of her face and on her right thumb.

4. The Petitioner submitted that the Death Sentence which was commuted to life imprisonment is unconstitutional. He has now exhausted his right of appeal and approaches court to declare that the death sentence is unconstitutional and contrary to Article 50(1) and Article 25(a) of the constitution and impose an appropriate sentence upon him.

5. He further submits that the court did not consider his mitigation as he is a first offender and has never been accused of breaking the law and at the same time very remorseful. The Petitioner apologized for the offence he committed, that he has reformed as he was misled by peer pressure. That he has attended a rehabilitation programme in Christianity education and general rehabilitation that have assisted him to live positively while in custody. Further that his health has deteriorated so much while in custody because of tuberculosis and asthma.

6. On his part Mr. Fedha, learned Counsel for the prosecution submitted that the Petitioner be jailed to forty (40) years in prison and cited a similar decision of this court being **Petition No. 248 of 2018 Salim Hamed Yanger & Another vs. Republic**.

7. I have considered the Petition as well submissions of the parties. On the issue of re-sentencing, the Petitioner submitted that he has reformed, and that this is evidenced by the Prisoner's Progress Report. Indeed, he may have reformed and may even have been rehabilitated. However, the element of retribution must be seen to be evident. The society expects sound policy judgment from the courts. A person who has been convicted of a crime must be adequately punished to achieve all the above three objectives. This Court notes that the Petitioner and his accomplices at the time of crime took away a life and injured a child of 14 years. Sentencing must consider the rights of the victim also.

8. In the premises, I now herewith set aside the death sentence and in place thereof I jail the Petitioner to a prison term of forty (40) years from the date of conviction.

That is the Judgment of the court.

Right of appeal in 14 days.

**Dated, Signed and Delivered at Mombasa this 30<sup>th</sup> day of March, 2020.**

**E. K. O. OGOLA**

**JUDGE**

In the presence of:

Petitioner in person via video link

Ms. Mwangeka for DPP

Mr. Kaunda Court Assistant