



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 20 OF 2018

MOHAMED ALI RINGI.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT

1. The Petitioner herein seeks a resentencing pursuant to the Supreme Court decision in **Francis Karioko Muruatetu vs. Republic [2017] eKLR**.
2. The Petitioner committed a robbery at Wasini Restaurant while armed with a 9mm Baretta pistol and in the process stole Kshs. 27,000/=. He was tried, convicted, and sentenced for the offence of robbery with violence in the Mombasa Chief Magistrate Court Criminal Case No. 1846 of 1996. The Court of Appeal after hearing his Appeal sentenced him on count 1 to death and kept counts 2 and 3 of in abeyance. He has been in jail for 23 years.
3. **Mr. Fedha** for the prosecution prays for a definite sentence of 25 years including years served due to the circumstances surrounding the Petitioner's charge.
4. The Petitioner submitted that he was a first offender and that he is very remorseful, he has reformed and greatly regrets committing the offence.
5. The aim of punishment is community protection, deterrence, retribution, rehabilitation, restorative Justice, and reformation. The Petitioner has served 23 years in prison. I have considered **The Sentencing Policy Guidelines, 2016** and its application, which is intended to promote transparency, consistency, and fairness in sentencing (See **Michael Kathewa Laichena & another vs. Republic [2018] eKLR**).
6. His Prison's Progress Report indicates that he is not a first offender but he has undergone guidance and counselling, he is well behaved, he has been taught to manage stress and he has undertaken and acquired grade 3,2 and 1 carpentry skill while in prison.
7. I have considered judgments of Superior Courts that are intended to ensure consistency and fairness. In the case of **Wycliffe Wangusi Mafura vs. Republic ELD CA Criminal Appeal No. 22 of 2016 [2018] eKLR**, the Court of Appeal imposed a sentence of 20 years where the appellant was involved in robbing an Mpesa shop with the use of a firearm with which he threatened the attendant but was caught before he inflicted any violence on her.
8. I have carefully considered the petition and submissions of parties, and relevant judicial authorities on resentencing for similar offences committed by the Petitioner. I have also considered mitigating and aggravating factors, the fact that the Petitioner has undertaken a course in carpentry as a way of reformation. It is indeed in the consideration of above premises that I now set aside the death sentence imposed on the Petitioner and substitute there for a term equivalent to that already served by the Petitioner. I also confirm sentences in counts 2 and 3 where he was jailed for 1 year each by the trial court or in default a fine of Kshs. 20,000. These sentences shall run concurrently.
9. The result is that the Petitioner is forthwith released from prison unless otherwise lawfully held.
10. That is the Judgment of the Court.

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

E. K. OGOLA

JUDGE

In the presence of:

Petitioner in person via video link

Ms. Mwangeka for DPP

Mr. Kaunda Court Assistant