



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO. 63 OF 2018**

**IN THE MATTER OF: THE CONSTITUTION OF KENYA 2010 (SUPERVISORY  
JURISDICTION AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOM  
OF AN INDIVIDUAL) HIGH COURT PRACTICE AND PROCEDURE RULES 2013**

**AND**

**IN THE MATTER: OF: ARTICLE 22(1) OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF: ARTICLES 19, 20, 21, 22, 23, 24, 25,  
27, 28, 48, 50, 258 AND 259 OF THE CONSTITUTION**

**BETWEEN**

**RASHID OMARI SHAURISHO.....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 together with his accomplice while armed with a toy pistol and knives robbed one Phillio Mwendwa Mutisya of a sum of Kshs. 76,000 and during the robbery, one of the complainant's employees was pressed-hard on the ground until he lost consciousness. The Petitioner was tried and convicted of the offence of robbery with violence in the Mombasa Chief Magistrate Court Criminal Case No. 2883 of 2006. He was sentenced to a mandatory death sentence and he has been in jail for 13 years after exhausting his Appeal processes.

3. **Mr. Fedha** for the prosecution prays for a definite sentence of 20 years including years served due to the circumstances surrounding the Petitioner's charge.

4. The Petitioner submitted that for the 13 years he has been in prison, he has been well behaved and he has engaged in various rehabilitation courses such as para-legalism, teaching, and other courses in commerce that will greatly assist him to be reintegrated back to the community.

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 v Republic [2018] eKLR**).

6. The Petitioner's Prison's Progress Report indicates that he is of good conduct, he is hard working, has undergone formal learning and

obtained KCPE and KCSE certificates, he has obtained a Certificate Para-legalism from NALEAP, an advanced Para-legalism Certificate from Kituo Cha Sheria, and that he is a teacher within Shimo la Tewa 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 provided by the Petitioner. I have also considered mitigating and aggravating factors, the fact that the Petitioner has undertaken courses as a way of reformation. I have also considered the prison Progress Report on the prisoner, which states that he is a trained para-legal and relates well with other prisoners. 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 of sixteen (16) years imprisonment from the date of his arrest.

9. The Petitioner is also entitled to benefit from remission of sentence as provided under Section 46 of the Prisons Act **if he meets the conditions.**

That is the Judgment of the Court.

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

**E. K. OGOLA**

**JUDGE**

In the presence of:

Ms. Mwangeka for DPP

Petitioner in person via video link

Mr. Kaunda Court Assistant