



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 56 OF 2019

MWARUA MFAUME.....PETITIONER

AND

DIRECTOR OF PUBLIC PROSECUTION...RESPONDENT

JUDGMENT

1. The Petitioner was convicted for the offence of Robbery with Violence Contrary to Section 296(2) of the Penal Code and sentenced to death in Mombasa Criminal Case No. 1680 of 2008. He appealed in HCRA. No. 21 of 2009. The appeal was dismissed and sentence upheld in Criminal Appeal No. 96 of 2014.

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 5th March, 2008 at about 6:30 a.m. the Petitioner together with another while armed with a knife attacked the victim inflicting serious injuries to her and robbed her Kshs. 30,000 in cash and mobile telephone, a pair of shoes and a flask containing tea.

4. The Petitioner avers 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 unconstitutional and impose an appropriate sentence upon him.

5. He further avers that the said death penalty was unfair and prays the court to review the sentence as he was a first offender with a young family whom he was taking care of.

6. The Prosecution submitted that the Petitioner and his fellow assailant were people known to the Victim at the time of the offence and that the Petitioner disappeared after the attack up until 3 months later when he was sighted and arrested. The prosecution further submitted that the Petitioner be sentenced to a deterrent sentence of 30 years including time served

7. On his part the Petitioner submitted that he has spent 11 years in prison and that he is remorseful and has already paid his debt to the society as he has learnt his lesson.

8. I have considered the Petition as well submissions of the parties. On the issue of sentencing the Petitioner submitted that he has reformed. This is evidenced by the Prisoner's Progress Report. Indeed, he may have reformed and may even have been rehabilitated going by the responsibilities he carries on in prison. However, I do note the gravity of the offence committed by the Petitioner and the fellow assailant, the fact that they were persons well known to the victim makes it worse in that the attack may have been a scheme fully orchestrated well in advance.

9. In the upshot, I hereby set aside the death sentence herein and instead thereof I jail the Petitioner for a term of 19 years from the date of arrest.

That is the Judgment of the court.

Right of Appeal in 14 days

Dated, Signed and Delivered at Mombasa this 12th day of March 2020.

E. K. O. OGOLA

JUDGE

In the presence of:

Petitioner in Person

Mr. Fedha for state

Mr. Kaunda –Court Assistant