



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**PETITION NO. 100 OF 2018**

**SHIDA KENGA MITSANZE.....PETITIONER**

**AND**

**DIRECTOR OF PUBLIC PROSECUTION.....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. 324 of 2009. He appealed in HCCRA No. 208 OF 2011 and Criminal Appeal. No. 208 of 2011. Both appeals were dismissed and sentence upheld.

2. The Petitioner 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 5<sup>th</sup> December, 2009 at about 9.00 p.m. at Mtsengo Village Mwanamiga Location in Kaloleni District within Coast Province, the Petitioner jointly with others robbed Cosmas Mramba of Cash 2,800, one pair of Timberland Shoes, one jeans, one mobile phone all valued at Kshs. 6, 700 and or after immediately at the time of such robbery wounded Cosmas Mramba.

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 as unconstitutional and contrary to Article 50(1) and Article 25(a) of the constitution and impose an appropriate sentence upon him.

5. He further submitted 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 he is very remorseful.

6. The prosecution submits that the Petitioner while committing the offence with the others had the intention of killing the victim; that he has been in custody for 10 years and prayed for a jail term of 25 years including the time served.

7. On his part the Petitioner apologized for the offence he committed and that he has reformed and prayed to be jailed for 15 years as he has 3 children with his wife who passed on as well as his father. He prayed to be released so that he can take care of his children and the elderly mother.

8. I have considered the Petition as well submissions of the parties. On the issue of re-sentencing the Petitioner submitted that he has reformed however there is no Prisoner's Progress Report to support the same. This Court notes that the Petitioner and his accomplices at the time of crime injured an innocent person and so sentencing must consider the rights of the victims.

9. In conclusion, and in consideration of the facts here, this court replaces the death sentence herein, and hereby sentences the petitioner to serve a jail term of eighteen (18) 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 12<sup>th</sup> day March, of 2020.**

**E. K. O. OGOLA**

**JUDGE**

In the presence of:

Petitioner in Person

Mr. Fedha for state

Mr. Kaunda –Court Assistant