



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**PETITIONS NOS. 7, 54 AND 55 OF 2018**

**(CONSOLIDATED AS PETITION NUMBER 7 OF 2018)**

**HERBERT WACHILONGA MABONI.....1<sup>ST</sup> PETITIONER**

**DIVAS WABOMBA CHACHA.....2<sup>ND</sup> PETITIONER**

**JOSEPH OMUSE WANJALA.....3<sup>RD</sup> PETITIONER**

**VERSES**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Petitioners were jointly charged with the offence of Robbery with violence contrary to Section 296(2) of the Penal code. They were convicted by the trial court and sentence to suffer death but was later commuted to life imprisonment. Their appeal to the High Court was dismissed as well as their appeal to the Court of Appeal.
2. Their separate petitions which for the purposes of this Petitioner have been consolidated into one petition essentially desires to take advantage of the decision of the Supreme Court of Kenya in the now famous case of **FRANCIS MURUATETU & ANOTHER VS. REPUBLIC (SUPREME COURT OF KENYA NO. 15 OF 2015.)**
3. They each pray that they should be given an opportunity to mitigate afresh and that they desire that they be pardoned taking into account the period they have served while in custody.
4. When the matter came up for hearing they each submitted separately and the general thread of their issues were that they have learned a lot during their incarceration in prison. They have been in jail for a total of 18 years and they wish that they be allowed to join their families.
5. Each of the Applicants seemed to have learned some trade while in custody including carpentry among others. They have also enrolled in some religious studies and have obtained certificates to that effect.
6. Having heard the parties orally, the duty of this court is very simple, namely to re-evaluate the petitioner's mitigation and if suitable see whether they deserve the orders they are asking. It must be noted that the directions in the Muruatetu case above was not a blanket one by the highest court in the land. The party coming under it must satisfy the court why he thinks that the sentence by the trial court must be interfered with. In other words, the court is still in possession of the discretion to allow the prayers or not.
7. In this case the nature of the charges which faced the Petitioners were grave. They in the process of carrying out the robbery fatally wounded the victim. His wife was seriously injured as well as his two daughters. They as well stole several assorted items from their victims.
8. Taking into consideration the circumstances of the incident *viz a viz* the mitigation by the Petitioners, this court is inclined to the Petitioner's request. They have spent almost 19 years in custody and must have learned their lessons. Obviously the Complainants cannot be compensated in any way having lost their husband and father tragically.
9. Taking the totality of the submissions as well as the history of the matter the life sentence imposed upon each one of them is hereby set aside and order that each of the petitioners is hereby sentenced to 30 years' imprisonment from 28<sup>th</sup> May, 2005.
- 10 . Orders accordingly.

**Dated, signed and delivered at Kitale via Zoom on the 30<sup>th</sup> day of April, 2020.**

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**H. K. CHEMITEI**

**JUDGE**

**30/4/2020**