

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

HIGH COURT CR. PETITION 3 OF 2019

ELIAS MURIMI MUSA alias KANANDA APPELLANT

V E R S U S

REPUBLIC RESPONDENT

RULING

1. The Petitioner was charged with Robbery with violence Contrary to **Section 296(2) of Penal Code** before Principal Magistrate's Court at Kerugoya. He was convicted and sentenced to death. He appealed to the High Court Embu in Criminal Case No. 198/2008 but was not successful.

2. He has filed a petition before this court guided by the Supreme Court decision in **Francis Karioko Muruatetu and Others –v- Republic Petition 15 & 16 of 2015** which held that the mandatory death sentence is unconstitutional. It also gave guidelines with regard to mitigating factors that are applicable in a re-hearing sentence for conviction of a murder charge. These are:-

- a) **Age of the offender.**
- b) **Being a 1st offender**
- c) **Whether offender pleaded guilty.**
- d) **Character and record of the offender.**
- e) **Commission of an offence in reference to gender based violence.**
- f) **Remorsefulness of the offender.**

3. The appellant has filed mitigation stating that the death sentence was commuted to life imprisonment. He pleads for leniency. That he pleads not guilty but now confesses that he committed the offence. He has been separated from his family for many years and prays for forgiveness. He further pleads that he has reformed and he was a first offender. He prays that he be set at liberty.

4. The State did not oppose the re-sentencing but urged the court to consider a sentence of 15 years.

5. I have considered the mitigation. I note that the accused was a 1st offender at the time he committed the offence. The accused was not armed. I also note the mitigation. I find that a sentence of 14 years would be sufficient I therefore order as follows:-

- a) **The death penalty imposed on the petitioner is reviewed and set aside.**
- b) **The Petitioner is sentenced to imprisonment for 14 years which will be computed from the date he was arrested.**

Dated at Kerugoya this 26th day of May 2020.

L. W. GITARI

JUDGE