

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CONSTITUTIONAL CRIMINAL PETITION NO. 2 OF 2020

BENARD OTIENO NGOGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. **Benard Otieno Ngoge alias Bernard Ouma Weda** ('the applicant' was charged with the offence of murder before the High Court here in Kisii. By a judgment dated 20th April 2010 he was found guilty as charged and convicted of the offence of murder and sentenced to death.

2. Via a petition filed on the 12th February 2020 the applicant avers that the imposition of the mandatory death sentence on him was arbitrary and unconstitutional and that the execution of the same has denied him his rights to a fair trial as stipulated under Article 25 (c) and 50 (2) of the Constitution. He avers further that he has served 15 years, has lived well with his fellow inmates and that he has also acquired spiritual rehabilitation skills that will assist him. That this was his first offence his childhood. That he wishes to be allowed to go back home. In his oral submissions he reiterated his plea in his petition and sought to be resentenced.

3. Mr. Otieno for the State had no objection to the applicant's 'plea to be resentenced. He noted that the applicant was given a mandatory sentence.

4. The Supreme Court in the case of *Francis Karioko Mururatetu & Another vs Republic [2017] eKLR* held that the death sentence is unconstitutional.

5. I have considered that the applicant has been in jail for a period of 15 years. Taking into account the circumstances of the case and that a life was lost, the period the applicant was in custody before sentence, the period he has been in jail and his mitigation, I set aside the death sentence and resentence the applicant to **30 years' imprisonment** from **20th April 2010**, the date of sentence.

Dated, signed and delivered at KISII this 26th day of June 2020.

R. OUGO

JUDGE

In the presence of;

Applicant In Person

Mr. Otieno Senior Prosecution Counsel Office of the DPP

Ms. Rael Court Assistant.