



**REPUBLIC OF KENYA**

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

**MISC.APPL NO.89 OF 2018**

**DISMUS OUMA OMUSUGU.....APPLICANT**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**RULING**

1. This is a ruling on application for resentencing. The applicant had been charged and convicted off the offence of **Robbery with Violence Contrary to Section 296(2) of the Penal Code**. He was sentenced to death. The Applicant has exhausted his right of appeal by filing appeal in both the High Court and Court of Appeal.

2. The applicant relied on the case of **Francis Karioko Muruatetu Vs Republic [2017] eKLR** to argue that the mandatory death sentence imposed by the trial court and upheld by the High Court is excessive and harsh and sought an appropriate sentence.

3. The applicant orally submitted that he has served sentence for 20 years now and has reformed. He stated that he has trained as a footballer and has obtained a certificate as a trainer. He prayed that he be given an opportunity to go back to the community.

4. In response, the state counsel urged the Court to consider aggravating circumstances and the fact that the applicant used dangerous weapons; pangas and rungun while committing the offence.

**ANALYSIS AND DETERMINATION**

5. I have considered the application herein. I do agree with the applicant that in view of decision in the case of **Francis Karioko Muruatetu & another v Republic [2017] eKLR** he deserves resentencing as the trial court at the time he was convicted imposed the mandatory death sentence as was provided by statute. The sentence was later commuted to life sentence. The applicant now prays for reduction of the sentence. He has now served 20 years' imprisonment. He states that he has trained as a footballer and will benefit the community by being a football trainer.

6. Whereas I do agree that the offence committed was serious and the applicant deserved deterrent sentence, the 20-year period the applicant has served has given him an opportunity to reflect his life and make a resolve to reform and be of benefit to the society.

7. In my view, the applicant deserves an opportunity to rejoin the community and contribute in national development out of prison.

**8. FINAL ORDER**

1. The applicant's sentence is reduced to sentence already served.

2. Applicant to be released forthwith.

**Ruling dated, signed and delivered via zoom at Nakuru This 18<sup>th</sup> day of June, 2020**

.....

**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Schola - Court Assistant

Applicant in person present

Rita for State