



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL PETITION NO. 21 OF 2020**

**JULIUS MURITHI M'MARANYA.....PETITIONER**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

1. **JULIUS MURITHI M'MARANYA** (“the petitioner”), was charged at the Senior Resident Magistrate’s Court at Tigania with the offence of robbery with violence contrary to *section 296 (2) of the Penal Code*.

2. It was alleged that on 1<sup>st</sup> April, 2009 at Buuri Location in Tigania East District, within Meru County, jointly with another not before court, while armed with dangerous weapons namely pangas and clubs the petitioner robbed Evans Thurania of Kshs. 3,000/= and immediately before the time of such robbery slashed the said Edward Thurania on his left hand and head using a panga causing him grievous harm.

3. He was convicted on the count and sentenced to death. He appealed against the foresaid decision in **HCCR.A No. 6 of 2013** and in the **CA CR.A No. 38 of 2015** but both appeals were dismissed.

4. Vide a petition dated 5<sup>th</sup> March 2020, the petitioner sought to be re-sentenced considering the facts, mitigation and sentence pursuant to the Supreme Court’s judgement in **Francis Karioko Muruatetu v. Republic**.

5. In that case, the Supreme Court of Kenya held that the mandatory nature of the death sentence was unconstitutional as it denied the Court its discretion in sentencing. The Court proceeded to set out the criteria or the principles that should guide a Court in sentencing.

6. Some of the considerations are *age of the offender, being a first offender, whether the offender pleaded guilty, the character and record of the offender, commission of the offence in response to gender-based violence, remorsefulness of the offender, the possibility of reform and social re-adaptation of the offender* and any other factor that the Court considers relevant.

7. Though the Supreme Court was dealing with the offence of murder, the view I take is that the same principle applies in other cases where the law provides for a mandatory death sentence including the instant case of robbery with violence. See the Court of Appeal decision in **William Okungu Kittiny vs. Republic [2018] eKLR**.

8. Before the trial court, **Edward Thurania (PW1) and Salome Thurania (PW2)** testified to the circumstances of the offence. The petitioner was armed with a panga which he used to administer several cuts on Pw1’s head and left arm after he failed to produce the cash the petitioner had demanded. Pw1’s left hand was almost completely amputated.

9. Pleading for her husband’s life Pw2 gave the attackers Kshs. 3,000/= belonging to Pw1. With the assistance from neighbours, Pw2 managed to get Pw1 to Tigania Police station where the incident was reported. Pw2 was referred to Miathene District Hospital and later to Meru District Hospital where he was admitted for two weeks.

10. The state conceded that the petitioner is a first time offender but prayed that the court sentences him to 20 years imprisonment.

11. This court has considered the particulars of the offence, the nature of the injuries occasioned to the victims and the time served by the petitioner. Applying the **Francis Karioko Muruatetu** case and taking into consideration the degree of gravity of the offence and the mitigation of the petitioner on re-sentencing establishes that the sentence of life imprisonment is not apt in the circumstances.

12. Being guided by the circumstances of the case and the mitigation offered by the petitioner, I find that a term of **20 years imprisonment** is justifiable in the circumstances.

13. Accordingly, I set aside the death sentence and substitute therefore with a sentence of 20 years imprisonment. The sentence shall commence the time he was first sentenced.

**DATED and DELIVERED at Meru this 30<sup>th</sup> day of July, 2020.**

**A. MABEYA**

**JUDGE**