



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT GARISSA**

**CRIMINAL MISC. APPL. NO. 100 OF 2019**

**ABDIRAHMAN ALI SHEIKH.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Applicant was convicted and sentenced to suffer death for the offence of robbery with violence contrary to section 296(2) of the Penal Code.
2. Being dissatisfied with the above sentence he lodged HCCRA No. 4 of 2012 in High Court at Garissa which after full hearing was dismissed.
3. He never appealed again to the Court of Appeal.
4. He has now moved court under the authority of **Muruatetu**, Supreme Court Petition No. 15 of 2015 of 17/12/2017 which held that mandatory aspect of death sentence is unconstitutional.
5. On 9/12/2011 the trial court sentenced the Applicant to death stating that the same was the only sentence provided by the law then.
6. The aforesaid **Muruatetu case** has opened a new window of opportunity for the courts to revisit sentences which are rendered unconstitutional due to the mandatory aspect of the sentence since 17/12/2017.
7. Thus, the court is perfectly seized of the jurisdiction to entertain the instant application.
8. The State has conceded same and agrees with Applicant's proposal that he can be taken to trial court at Mandera Law Courts for resentencing.
9. Thus, the court makes the following orders: -

*(1) The death sentence in Mandera Principal Magistrate's Court Criminal Case No. 306 of 2011 is set aside.*

*(2) The matter is referred back to the Law Court Mandera for sentencing after considering mitigations and period Applicant has been in custody.*

**DATED, DELIVERED AND SIGNED AT GARISSA THIS 23<sup>RD</sup> DAY OF JULY, 2020.**

**C. KARIUKI**

**JUDGE**