

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL PETITION NO. 49 OF 2019

SAMUEL KARANI KIAMBATI.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. **SAMUEL KARANI KIAMBATI (“the petitioner”)**, was charged at the Senior Resident Magistrate Court in Nkubu with two counts of robbery with violence contrary to **section 296 (2) of the Penal Code**.
2. The particulars of the offence was that on 30/5/1998 at 3:00 a.m. at **Kiria Kenene**, jointly with others not before court, the petitioner and his co-accused robbed Silas Mbaabu and Japheth Gikunda of various items including cash, T.V., radio cassette, cigarettes and during the robbery they used actual violence on the victims.
3. He was convicted on and sentenced to death. He appealed against the foresaid decision to this Court in **Cr. Appeal No. 237 of 2000** and to the Court of Appeal in **CA Cr. Appeal No. 320 of 2006** but both appeals were dismissed.
4. Vide a petition dated 12th 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. I have considered the circumstances under which the offence was committed. Before the trial court, **Beatrice Mbida Mbaabu Pw1** led evidence of how the petitioner together with others not before court attacked and robbed them at the dead of the night and occasioned bodily harm to **Pw1 Silas Mbaabu Itithia** and **Japheth Gikunda Pw3**. She also led evidence of how the petitioner was mistakenly cut during the ordeal. With the assistance of a trained police dog, the petitioner was arrested from his residence, 300 metres from the scene.
9. The Respondent conceded that the petitioner is a first time offender but prayed that the court sentences him to 20 years imprisonment.
10. Having considered the particulars of the offence, the nature of the injuries occasioned to the victims and the time served by the petitioner. This court is of the opinion that the petitioner has paid his just debt to the society.
11. In the premises therefore, this court favourably considers the petitioner’s petition for re-sentencing. The petitioner has been in custody since 1998. He has served 22 years in custody. That to my mind should be sufficient punishment.
12. Accordingly, I set aside the death sentence and re-sentence the petitioner to the period already served. He is to be set at liberty forthwith and released from prison unless otherwise lawfully held.

It is so ordered.

DATED AND DELIVERED AT MERU THIS 12TH DAY OF AUGUST, 2020.

A. MABEYA

JUDGE