

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CONSOLIDATED PETITIONS NO 82 & 84 OF 2019

PETER GITHUKA CHEGE.....1ST PETITIONER

KEVIN MAINA NJERI.....2ND PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The petitioners, **PETER GITHUKA CHEGE** and **KEVIN MAINA NJERI** were charged with two counts of robbery with violence contrary to **section 296 (2) of the Penal Code**. They were both sentenced to suffer death on 12th July 2011. The petitioners then appealed to the High court and this court affirmed the sentence save that the death sentence on count II to remain in abeyance pending execution of death sentence in count I. The 2nd appellant has filed an appeal before the Court of Appeal, and the appeal is pending hearing.
2. The death sentences of both petitioners were commuted to life imprisonment by His Excellency the President.
3. The petitioners have now moved the court for resentencing seeking a reduction of their sentences.
4. The petition has been brought after the Supreme Court declared the mandatory death sentence unconstitutional in the case of **Francis Karioko Muruatetu & Another v Republic SCK Pet. No. 15 OF 2015 [2017] eKLR**.
5. Before the trial court the 1st petitioner during mitigation stated that he had not committed the offence while the 2nd petitioner asked the court to consider that he is a caregiver to his grandmother. The mitigation of the petitioners was not considered given that the penalty for the offence was a mandatory death sentence. The petitioners now states in mitigation that they are married with children who are in need of parental care and protection.
6. I have considered the circumstances of under which the offence was committed. I have also taken into account that two people were injured during the incident and the nature of their injuries was classified as harm. I have further considered that the petitioners were first offenders as was submitted by the prosecution at the trial court.
7. In conclusion, after considering the entirety of the facts, it is appropriate to substitute the death sentence pronounced on the petitioners. I therefore set aside the death sentence and sentence the petitioners to 25 years' imprisonment on each count commencing from the date of sentencing before the trial court that is, from 12th July 2011. The 25 years imprisonment on each count shall run concurrently.

Dated, Signed and Delivered at KISII this 17th day of December 2020.

R.E. OUGO

JUDGE

In the presence of;

Petitioners; Peter Githuka Chege and Kevin Maina Njeri –Present

Mr. Otieno Senior Prosecution Counsel Office of the DPP

Ms. Rael Court Assistant