



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL PETITION NO. 102 OF 2019

VINCENT NZIVE MUVANDI

FRANCIS NDOLO DAVID

JOSEPH KYALO MWANZIA.....PETITIONERS

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein, **Vincent Nzive Muvandi**, together with 2 others were charged and convicted, with the offence of **Robbery with Violence contrary to Section 296(2) of the Penal Code**, where they were found guilty, convicted and sentenced to suffer death.
2. The particulars of the offence were that on the **2nd February 2008 at 11pm**, at **Salombo Club**, Moi Avenue within Mombasa District, the Petitioners jointly with others not before court being armed with dangerous weapons namely a pistol and a knife, robbed off the Complainant a compressor machine and at or immediately before or after the time of such robbery threatened to harm the Complainant.
3. The Petitioner has exhausted his appellate rights, and is now in this Court for purpose of resentencing pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Another vs. Republic [2017] eKLR**, in which the apex court found that the mandatory nature of the death sentence was unconstitutional and struck down **Section 204** of the **Penal Code** to the extent that it prescribed mandatory death sentence upon conviction for murder.
4. **M/S Wanjohi** for the State relied on their submissions filed on **28th October, 2020**, and submitted that the Petitioners be jailed for **14 years** which he has already served with the effect that the Petitioner would be free and so they may be set free.
5. Pursuant to submissions by the DPP that the Petitioners be jailed for the time served of 14 years, I now hereby set aside the sentence of death imposed on Petitioner. In place thereof, I jail the Petitioner for a term equivalent to that already served of **14 years**. The consequence is that the Petitioner is set free and released from prison unless otherwise lawfully held.

That is the Judgment of the Court.

Dated, Signed and Delivered at Mombasa this 16th day of December, 2020.

E. K. OGOLA

JUDGE

Judgment delivered in chambers via MS Teams in the presence of:

M/S Wanjohi for State

Petitioner in person

Ms. Peris Court Assistant

Note:

In view of the declaration of measures restricting court operations due to the **COVID-19** pandemic and in light of the directions issued by His Lordship the Chief Justice on **15th March 2020**, this Judgment has been delivered to the parties online with their consent. They have waived compliance with **Order 21 Rule 1** of the Civil Procedure Rules which requires that all Judgments and Rulings be pronounced in open Court.