

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL AND JUDICIAL REVIEW DIVISION

PETITION NO. 121 OF 2019

LMS.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONRESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein, **LMS** was charged and convicted, together with others, with robber with violence contrary to **Section 296 (2) of the Penal Code**.

2. His Appeal to Court of Appeal was dismissed on **26th February, 2015**. The Petitioner is now in this court for resentencing pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Another vs. Republic** that the mandatory nature of the death sentence is unconstitutional.

3. The Petitioner states that he was charged when he was **17 years** old and he has been in prison for **16 years now**. The Petitioner avers that he has reformed, regrets his past which he blames on his youth, and says he is now a man of God and has learnt Theology. His co-accused William Mronbo Ngima, Jothan Mwauda and Roman Wegenge were all sentenced to 20 years in a Voi Court and they have been released. The court has confirmed this assertion to be true. The three were resentenced in **Voi Senior Principal Magistrate's Court – Criminal Case No. 32/2003** and were sentenced to **serve 20 years** by Hon. M. Onkoba – PM on **16th July, 2019**. The Petitioner submitted that he should be sentenced for the time served, and be set free.

4. **Mrs. Balongo**, Learned Counsel for the prosecution submitted that the Petitioner be jailed for **35 years** because he is a constant danger to society.

5. I have considered these submissions. The purpose of sentencing is to achieve parity in justice. It is a process also through which an offender is granted time to reflect upon his or her conduct, and to reform. It also serves as retribution so that the victim is also vindicated.

6. The Petitioner was involved in robbery, and used offensive weapons and cut and beat the victims. That is not an acceptable conduct. However, this court considers that the Petitioner has **served 16 years** in jail. To atone for his conduct, the court hereby sets aside the death sentence meted on the Petitioner by the trial court.

7. In place thereof, the Petitioner is hereby sentenced to serve a jail term of **twenty (20) years** from the date of arrest. Right of appeal in 14 days.

That is the Judgment of the Court.

Dated, Signed and Delivered at Mombasa this 15th day of December, 2020.

E. K. OGOLA

JUDGE

In the presence of:

Petitioner in person via video link

M/S Fedha for DPP

Ms. Peris Court Assistant