



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 193 OF 2018

MATHEKA KITHOME NGOMO.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein, **Matheka Kithome Ngomo** was charged and convicted, together with others, with the offence of **Robbery with Violence contrary to Section 296 (2) of the Penal code**.

2. The particulars of the offence were that on the night of **18th August 2002**, at around **1.00am**, the Petitioner jointly with others not before court armed with dangerous weapons namely iron bars and pangas, proceeded to brake inside the premises of the Complainant and stole a radio cassette, speakers, a watch and a mobile phone belonging to **Simon Mutua Kitulya**. The Petitioner and the others had dangerous weapons which they used to threaten some of the complainant's workers on the night of the robbery.

3. The Petitioner was tried and convicted and jailed to life imprisonment.

4. The Petitioner 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.

5. It is for this reason that I take the jurisdiction to re-consider the sentence on the Petitioner herein following the **Muruatetu Case**.

6. Mr. Fedha, Learned Counsel for the DPP submitted that the Petitioner's co-accused was jailed for **17 years** and has been set free. He avers that the same position should apply herein and that the Petitioner should be set free.

7. Pursuant to the submissions of the prosecution, I hereby jail the Petitioner to **19 years** which he has already served with the result that he is forthwith released from prison unless lawfully held.

That is the Judgment of the Court.

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

E. K. OGOLA

JUDGE

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

Mr. Fedha 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.

E. K. OGOLA

JUDGE