



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL PETITION NO. 90 OF 2019

SAMUEL KARIUKI KINYUA.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein, **Samuel Kariuki Kinyua** was charged and convicted, 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 **19th** and **20th** day of **October, 2003**, at **Naira House** in **Casuarina** area in **Malindi Location** within **Malindi District** of the **Coast Province**, jointly while armed with offensive weapons namely knives, robbed **Kazungu Randu Rashid** of one Motor Cycle make Suzuki registration **No.KAC 771M**, one Alarm Control and one knife all valued at **Kshs.200,000/=** and at or immediately before or immediately after threatened to use violence against Kazungu Randu Rashid.
3. The Appellant also faced an alternative charge of **handling stolen property contrary to Section 322 of the Penal Code**. The particulars being that on the **19th** and **20th** day of **October, 2003** at **BP Petrol Station Area** in **Malindi Location** within **Malindi District** of the **Coast province**, otherwise than in the course of stealing, jointly dishonestly handled one Suzuki Motor Cycle registration **No.KAC 771M**, knowing or having knowledge that it was unlawfully obtained or stolen property.
4. The Petitioner was found guilty of the main charge of Robbery with Violence, convicted and sentenced to death. Being dissatisfied with the conviction, he filed an Appeal to the High Court which was dismissed on **17th March 2010**.
5. 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.
6. It is for this reason that I take the jurisdiction to re-consider the sentence on the Petitioner herein following the **Muruatetu Case**.
7. **Mr. Fedha**, Learned Counsel for the DPP submitted that one of the Petitioner's co-accused **Michael Wafula Wambani** passed away at Malindi Prison while the **3rd** Co-accused **Josphat Musyimi Makau** filed a **Petition No.25 of 2019** in **Malindi Court**. His Petition was allowed and he was sentenced to serve **16 years** in prison. He was released on **14th April, 2020**. Counsel submitted that the Petitioner be released for the time served based on **Petition No.25 of 2019 (Malindi)**.
8. In parity with the sentence given in **Petition No.25 of 2019 (Malindi)** in which the Petitioner's co-accused **Josphat Musyimi Makau** was sentenced to serve **16 years** in jail, the Petitioner herein is hereby sentenced to serve **16 years** in jail for his crime. And since he has already served the said **16 years**, the Petitioner is hereby set free and released from prison unless otherwise 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.