



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 07 OF 2019

SEIF HAMED ABDALLAH.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONRESPONDENT

JUDGMENT

1. The Petitioner herein **SEIF HAMED ABDALLA** was charged and convicted with the offence of robbery with violence contrary to Section 296 (2) of the Penal Code and was sentenced to death by the Principal Magistrate. His appeals to High Court and to the Court of Appeal were dismissed.
2. The Petitioner is now in this court for resentencing pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Another v Republic [2017] eKLR** in which the Apex Court found that the mandatory nature of the death sentence is unconstitutional.
3. I have considered submissions on resentencing both from the Petitioner and from the Director of Public Prosecutions. The Petitioner has been in jail for fifteen (15) years now. He submits that he has reformed, and that he should be set free to take care of his aging parents and his young family. The Prison Progress Report states that the Petitioner is polite and well behaved in prison.
4. On his part Mr. Fedha, learned Counsel for the DPP submitted that the Petitioner should be jailed for twenty years from the date of conviction given the seriousness of the offence.
5. I have carefully considered these submissions. The objective of sentence is to meet out proper retribution for the offence. It also aims at reforming the convict.
6. The Petitioner appears to me to be remorseful of his past. The 15 years he has spent in jail is not a short time. During that time, I believe he has had a chance to reflect on his life.
7. The Petition is also being heard during the Covid-19 pandemic, and it is important that when possible, the courts try to decongest our prisons.
8. I am satisfied that the 15 years already served by the Petitioner is adequate punishment for the crime he was convicted for, especially in this Covid-19 times.
9. I therefore hereby set aside the death sentence imposed upon the Petitioner. Instead thereof I sentence the Petitioner to serve 15 years in jail. And the Petitioner having already served the said 15 years, he is now hereby set free and 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 via MS teams in the presence of:

Petitioner in person via video link

Mr. Fedha for DPP

Ms. Peris Court Assistant