

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISII

CONSTITUTIONAL PETITION NO. 55 OF 2018

BETWEEN

GIDEON MEITEKIN KOIYET.....PETITIONER

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

1. The petitioner seeks resentencing. He was convicted of the offence of robbery with violence contrary to section 296 (2) of the Penal Code and was sentenced to death. His appeal in the High Court, in HCCR No. 90 of 2007 was dismissed and his second appeal to the Court of Appeal Criminal Appeal No 297 of 2012 was also dismissed.

2. The petitioner relies on the Supreme Court decision in Francis **Karioko Muratetu & Another vs. Republic SCK Petition No. 15 of 2015** declaring the mandatory death penalty unconstitutional. This Court of Appeal's decision in **William Okungu vs. Republic Criminal Appeal No. 56 of 2013** held as follows;

[9] From the foregoing, we hold that the findings and holding of the Supreme Court particularly in paragraph 69 applies mutatis mutandis to Section 296 (2) and 297 (2) of the Penal Code. Thus, the sentence of death under Section 296 (2) and 297 (2) of the Penal Code is a discretionary maximum punishment.

3. I have read the proceedings in the lower court and considered, the circumstances of the case, I also note that the petitioner has been in custody since 7/6/2006, he was sentenced on the 14/6/2007. I sentence the petitioner to fifteen (15) years from 14th June 2007.

4. Dated signed and delivered at Kisii this 29th day of March 2019.

R.E.OUGO

JUDGE

In the presence of;

Petitioner In person

Mr. Otieno Senior Prosecution Counsel Office of the DPP

Rael Court Clerk