



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**CONSTITUTIONAL PETITION NO. 9 OF 2019**

**(CORAM: HON. R.E. ABURILI – J.)**

**GABRIEL OMONDI ..... PETITIONER**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The Petitioner was in 2014 sentenced to suffer death for the offence of robbery with violence contrary to section 296(2) of the Penal Code, by Ukwala **SRM in Cr. Case No. 568 of 2014** which sentence was commuted to life imprisonment in 2015 by His Excellency the President.
2. He has served about 5 years in prison. He has learnt Theology, Diploma Grade 2 in tailoring and carpentry. He is 41 years old. He pleads for leniency. His appeal to Kisumu HCRA **717/2014** was dismissed.
3. The Court of Appeal equally dismissed his appeal vide C.A. Cr. A. No. 111/2014. He has now approached this Court for resentencing courtesy of the **Francis Muruatetu V. R. Case Supreme Court Petition 15 and 16/2015**.
4. He claims, nonetheless that death sentence is inhumane and unconstitutional.
5. The Prosecution Counsel led by Ms. Odumba submitted that the Petitioner had only served 8 years in prison and that there was no proof of reform. That the sentence was lawful hence it should be upheld.
6. I have considered the Petition and the trial record which shows that the robbery involved use of a firearm which had been issued to the petitioner's co accused Vincent **Onyango Misingo** who served as a police reservist. The petitioner as I have stated is not remorseful at all and his attitude in court tells it all. He is in my view a dangerous person who must be kept out of the society for some time for him to fully reform before being let out.
7. Albeit the Petitioner has learnt some skills in prison, he did not demonstrate remorse. Robbery with violence is traumatizing to the victims and the society at large. Other times the victims are seriously injured and they succumb to those injuries.
8. Death sentence is lawful and constitutional as stipulated in **Article 25 of the Constitution**. It is still in our Statute books and where appropriate, the Courts will impose such punishment of death without fear or favour.
9. The Francis Muruatetu decision did not outlaw death sentence but attacked its mandatoriness which deprived the trial Court of the discretion to mete out appropriate sentence taking into account mitigation and circumstances under which the offence was committed. The petitioner in this case has not mitigated. He simply wants custodial sentence and that he committed robbery because of bad friends.
10. Nonetheless for an unrepresented person who is not legally aided, it is possible that he understands not what mitigation is to persuade the Court to consider custodial sentence.
11. In other instances, very touchy mitigations may mean nothing and they may not demonstrate remorse or reform.
12. I will, therefore, taking into account, the decision in the **Francis Muruatetu** case I give the Petitioner the benefit of doubt and resentence the Petitioner to a custodial definite sentence. I set aside the death sentence as commuted to life imprisonment and resentence him to serve 20 years imprisonment to be calculated from the date of his arrest.

**Dated, signed and delivered at Siaya this 24<sup>th</sup> Day of June, 2019.**

**R.E. ABURILI**

**JUDGE**

**In the presence of:**

The appellant in person

Mr. D. Okachi, Senior Principal Prosecution Counsel

CA: Modestar and Brenda