



**REPUBLIC OF KENYA**

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

**CONSTITUTIONAL PETITION NO. 7 OF 2019**

**(CORAM: R.E. ABURILI – J.)**

**ZACHARIA OMONDI OWUOR.....PETITIONER**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

1. The Petitioner **ZACHARIA OMONDI OWUOR** was charged, convicted and sentenced to suffer death for the offence of **robbery with violence contrary to section 296 (2) of the Penal Code vide Siaya P.M. Cr. Case No. 51 of 2001**. He was then aged 22 years. He is now 40 years. He has been behind bars for 18 years. He challenged the conviction and sentence before the High Court and lost.
2. His appeal to the Court of Appeal was equally unsuccessful. Having exhausted all the appeal mechanisms, a ray of hope emerged vide **Supreme Court Petition 15 and 16 of 2015 Francis Karioko Muruatetu Vs Republic**.
3. Prior to the above decision, death sentence meted out in capital offences to convicts was considered Mandatory sentence and therefore the trial Courts hands were forever chained to meting out death sentences as the only available sentence for capital offender convicts.
4. The **Francis Karioko Muruatetu decision (supra)** changed that landscape. The Apex Court made it clear that whereas death sentence was lawful and could therefore be imposed in appropriate cases, but that its mandatory nature no doubt deprived the trial court of the discretion to mete out appropriate sentences having regard to the circumstances of each case.
5. In addition, the Supreme Court found that the convicts were denied an opportunity to mitigate to enable the court exercise discretion in sentencing.
6. The above decision has given rise to an avalanche of constitutional petitions brought by convicted persons who were sentenced to hang and whose sentences were later commuted to life by His Excellency the President.
7. The convicts have been asking this court to resentence them taking into account their mitigation. The Petitioner herein submits in support of his Petitions that he was young but is now mature enough and reformed. He has acquired skills in upholstery, Grade 1, Tailoring Grade 3 and has a Diploma in Biblical studies. He is now a pastor. He was sentenced in 2002 and has been in jail for 18 years. He has benefitted from prison rehabilitation and reformation efforts. He can rehabilitate other prisoners and encourage them to reform. He produced certificates earned in prison.
8. The value of the robbed property was KShs. 20,000/= which he and his gang simply went to drink away. The robbers never benefitted from crime save for short lived pleasure. The petitioner who is now a preacher in prison asks for forgiveness from the complainants whom he claims were not injured.
9. The Prosecution Counsel M/s. Odumba left the matter to the Court to decide.
10. I have considered the Petition, Mitigation by the Petitioner, and the life's skills acquired in prison for over the 18 years that he has been in prison. The victims of the robbery were traumatized but not seriously injured. The value of the property robbed was KShs. 20,000/= quite valuable those days and years but not now when the shilling has depreciated. The Petitioner was a young adult who has now learnt his lessons in prison. He promises to be useful to the community. He can work or employ others and teach them the valuable skills in tailoring and upholstery. He has learnt the value of life and respect for others and their property. Deterrent sentence was necessary but now he deserves a chance to prove his worth to the society since the law that send him to prison is still very much alive. He has demonstrated to this court that he is fully reformed and the court has believed him.

11. In the premises, I am persuaded that the Petitioner deserves, a custodial sentence as life imprisonment is so uncertain for a reformed and rehabilitated person like him. He impressed the court as a truly reformed individual.

12. Accordingly, I allow the petition for resentencing, set aside the lawful death sentence imposed on him by the trial Court and substitute it with a prison term of 19 years to be calculated from the date of his arrest.

13. File Closed. Orders accordingly.

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

**R.E. ABURILI**

**JUDGE**

**In the presence of:**

Petitioner in person

Mr. Okachi Senior Principal Prosecution Counsel

CA: Brenda and Modestar