



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 123 OF 2018

IN THE MATTER OF: THE CONSTITUTION OF KENYA 2010 (SUPERVISORY JURISDICTION AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOM OF AN INDIVIDUAL) HIGH COURT PRACTICE AND PROCEDURE RULES 2013

AND

IN THE MATTER: OF: ARTICLES 20 (1) (4), 21 (1) (4) 22 (1) (3) (C) OF THE NEW CONSTITUTION OF KENYA

AND

IN THE MATTER OF: CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL UNDER ARTICLES 25 (A) (B) (C), 26 (1), 27 (1) (2) (4), 28 (A) (C) (D) (F), 35 (1), 48, 50 (1) (2) (P) (Q) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: ARTICLES 258 (1) AND 259 (1) (3) (A) OF THE GENERAL PROVISIONS OF THE CONSTITUTION 2010

AND

IN THE MATTER OF: SECTION 329 AND 216 OF THE CRIMINAL PROCEDURE CODE

BETWEEN

PHILIP NZAKA WATU.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT

I have carefully considered the petition. The matter is for resentencing. I have considered the plea of the Petitioner. The offence committed was grievous. The sentence must be one to deter the same. A message must be sent to would be offenders that pre-meditated murder must be punished. The Petitioner murdered a dumb and deaf person. The Petitioner was already convicted to suffer death. The said death sentence must be replaced by a sentence which reflects the gravity of the offence. Although the DPP has submitted for 35 years, the offence and the way it was committed deserves a harsher punishment. However, I will accept the submission of Mr. Fedha for the DPP.

In the upshot I herewith sentence the Petitioner to a total of 35 years including all the years he has spent in prison. The Petitioner is given the right to appeal within 14 days.

That is the Judgment of the Court.

Dated, Signed and Delivered in Mombasa this 20th day of June, 2019.

E. K. OGOLA

JUDGE

In the presence of:

Mr. Fedha for DPP

Petitioner in person

Mr. Kaunda Court Assistant