



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 63 OF 2018

IN THE MATTER OF: ALLEGED CONTRAVENTION OF RIGHTS OR FUNDAMENTAL FREEDOMS UNDER ARTICLE 22(1) OF THE NEW CONSTITUTION

AND

IN THE MATTER OF: THE HIGH COURT PRACTICE AND PROCEDURE RULE 2013 (SUPERVISION AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOM OF THE INDIVIDUAL)

AND

IN THE MATTER OF: ARTICLE 25(C), 20(1), 23(1), 165(1), 27(2), 28, 48, 50(2) AND 259(1) OF THE CONSTITUTION

BETWEEN

AMANI KITSAO MWENI.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT

1. The Petitioner was convicted with the offence of robbery with violence. He, together with his accomplice robbed off a motor vehicle valued at Kshs. 75,000 from a bike rider. He was sentenced to death but now seeks a resentencing pursuant to the Supreme Court decision in **Francis Karioko Muruatetu vs. Republic [2017] eKLR**.
2. The Petitioner has already served 10 years. The Petitioner submitted that the said 10 years is enough punishment and that he should now be released.
3. On their part the prosecution submitted that the Petitioner should be jailed to a total sum of 25 years including the term served.
4. In my view the aim of punishment is retribution, rehabilitation and reformation. The Petitioner was sentenced to death, and under the said Muruatetu case, a revision of his sentence must result in a reasonable sentence which accounts for the gravity of the offence. Robbery with violence is a serious offence the punishment of which must aim at deterrence. People who choose to commit crimes must be prepared to pay for the same if they are found out. It is my view that the proper sentence should be, in this case, 22 years.
5. I accordingly sentence the Petitioner to 22 years in jail including the period already served. The Petitioner has the right of appeal to be exercised within 14 days.

That is the Judgment of the Court.

E. K. OGOLA

JUDGE

Dated, Signed and Delivered at Mombasa this 31st day of July, 2019.

P. J. O. OTIENO

JUDGE

In the presence of:

Mr. Fedha for DPP

Petitioner in person