



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 201 OF 2018

**IN THE MATTER OF: ARTICLES 22(1), 23(1), 25(a) (c) (d), 50(1), 19(1) (2) and (3), 20(1)
(2) (3) and (4), 21(1), 27(1), 28, 47, 48, 165, 258 AND 259 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER: OF: SECTION 216 AND 329 OF THE CRIMINAL
PROCEDURE CODE AND SECTION 204 OF THE PENAL CODE**

AND

IN THE MATTER OF: SECTION 333 OF THE CRIMINAL PROCEDURE CODE

AND

**IN THE MATTER OF: SUPREME COURT JUDGMENT PETITION NO.
15 OF 2015 FRANCIS KARIOKO MURUATETU AND WILSON THIRIMU MWANGI**

AND

**IN THE MATTER OF: DECLARATION IN PETITION NO. 618 OF
2010 JOSEPH KABERIA KAHIGA AND OTHERS VS. ATTORNEY GENERAL (2016)**

AND

IN THE MATTER OF: COURT OF APPEAL CR. APPLICATION NO. 199 OF 2004 AT MOMBASA

AND

IN THE MATTER OF: HIGH COURT CRIMINAL CASE FILE NO. 198 OF 1994 AT MOMBASA

BETWEEN

ANASTASIA MUNINI MBAL.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT

1. The Petitioner herein has come to this Court for purposes of resentencing arising from the decision of the Supreme Court in **Francis**

Karioko Muruatetu vs. Republic [2017] eKLR. The Petitioner was tried for murder in trial cause No. MSA HCCC No. 198/1994, was convicted and sentenced to death. She appealed vide Mombasa Appeal No. 199/2004 and the conviction was upheld.

2. The Petitioner killed her own husband. The Petitioner is 69 years old and has served 25 years in prison.

3. The Petitioner's prison progress report states that she suffers hypertension and eye cataract. She is a leader in prison and a counsellor. The Petitioner has a son and six (6) grandchildren. She submits that she will be welcomed home if she is released. The Petitioner submitted that the 25 years she has served in prison is adequate punishment, that the crime was that of passion, that she has reformed and understands the value of keeping peace, and prays for instant release.

4. The prison progress report speaks well of the Petitioner. There is also medical report showing that the Petitioner suffers hypertension and eye cataract.

4. On their part the Director of Public Prosecution submitted that the Petitioner committed a crime of passion, and has reformed, and should be released on probation for a period of 3 years.

The Determination

5. I have carefully considered the submissions of the parties. The prosecution agrees that the Petitioner be released on a 3 year probation. I have also noted that the aim or goal of sentencing is about retribution, rehabilitation and reformation. The Petitioner has fulfilled all the above requirements. The Petitioner has trained inmates and is a counselor. The inmates relate well with her.

6. I am satisfied that the Petitioner has served time in prison enough to achieve the objectives of punishment by way of sentence.

7. Accordingly, this Court herewith releases the Petitioner from prison on condition that the Petitioner shall be under probation for a period of one (1) year.

That is the Judgment of the Court.

Dated, Signed and Delivered in Mombasa this 30th day of July, 2019.

E. K. OGOLA

JUDGE

In the presence of:

Mr. Fedha for DPP

Petitioner in person

Mr. Kaunda Court Assistant