



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 65 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: ARTICLE 22(1) OF THE CONSTITUTION

AND

IN THE MATTER OF: ARTICLE 23(1) OF THE CONSTITUTION

AND

IN THE MATTER OF: ARTICLES 19, 20, 21, 22, 23, 24, 25, 27, 28, 48, 50, 258 AND 259 OF THE CONSTITUTION

BETWEEN

MICHAEL J. OBWOKA.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT

1. The Petitioner herein seeks a resentencing pursuant to the Supreme Court decision in **Francis Karioko Muruatetu vs. Republic [2017] eKLR**.
2. The Petitioner was tried and convicted of robbery with violence in the Mombasa Chief Magistrate Court Criminal Case No. 2353 of 1997. He was sentenced to death and has been in jail for 22 years. The Petitioner was involved in robbery with violence where two victims a couple together with their daughter were stopped and forced to drive in an alternate route and later forced out of their vehicle. Their daughter was then kidnapped but after investigation the vehicle was recovered and the daughter was found. The daughter had been used as a shield to demand for ransoms. The Petitioner robbed a motor vehicle with a knife. He also used a home made bomb which he threatened them with.
3. The prosecution calls for a stiffer sentence of a total of 23 years to deter the offence.
4. The Petitioner submits that the 22 years he has done in jail is enough punishment and that he should be released since he is 62 years old and is married with children.
5. I have carefully considered the issue at hand. The aim of punishment is retribution, rehabilitation and reformation. The offence which was committed by the Petitioner is grave and should be properly punished. The Petitioner is now 62 years. He has a good record in prison.
6. The Petitioner is remorseful of his past. He did not cause any bodily harm to the victims. He states that he has reformed. The Petitioner is a sick man. He has lost the function of one of his eyes, while the remaining one has lot 50% functionality. He is therefore a dependant.
7. The Probation Report filed in Court on 24th June, 2019 is favourable to the Petitioner, and proposes that he be released back to society, and that he is not a risk to society.

8. I have carefully considered the submissions. The Petitioner has served 22 years in prison. He is almost blind. He submits that he has reformed and is ready to join society.

9. The Social Report about him indicates a person who is now, due to his ailment, a little risk to society. A robbery with violence is a serious offence and should be properly punished. However, in the circumstance of this case, and with the ailment suffered by the Petitioner, it is prudent to release the Petitioner so that he can seek adequate treatment outside.

10. Accordingly, the Petitioner is sentenced to the term already served, and is herewith forthwith released and set free unless held for valid reasons.

That is the Judgment of the Court.

Dated, Signed and Delivered at 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