



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO. 78 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**

**MDOE CHAKA MDOE.....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. 2577 of 2002. He was sentenced to suffer death, and failed in all his appeals. The Petitioner was involved in gang robbery. His co-perpetrators were never arrested. Kshs. 1,000,000/= was lost in the process and the victim was injured. The Petitioner has now served 16 years in jail.
3. The prosecution calls for a stiffer sentence of a total of 26 years to deter the offence.
4. The Petitioner submits that the 16 years he has done in jail is enough punishment and that he should be released since he is already 60 years old and is married with 6 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 59 years. He has a good record in prison and has also learnt trade of painting. In my view the Petitioner needs to serve more time in jail to send a strong warning to would be offenders that crime does not pay.

6. Accordingly, I herewith sentence the Petitioner to 20 years in prison including the time already served.

7. The Petitioner has the right of appeal within 14 days.

That is the Judgment of the Court.

**Dated, Signed and Delivered at Mombasa this 30<sup>th</sup> day of July, 2019.**

**E. K. OGOLA**

**JUDGE**

In the presence of:

Mr. Fedha for DPP

Petitioner in person