



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO. 105 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**

**PILOT MWAMBUINGU MJOMBA.....PETITIONER**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT**

**JUDGMENT**

1. The matter before the Court is for the purposes of resentencing pursuant to the Supreme Court decision in the now famous Supreme Court decision in **Francis Karioko Muruatetu vs. Republic [2017] eKLR**.
2. The background herein is that the Petitioner was convicted of murder contrary to Section 203 as read with Section 204 of the Penal Code. He was sentenced to death, which was later commuted to life in prison. The Petitioner has been in jail for 25 years. He was convicted of murdering a 14 year old boy who was a brother to his girlfriend of 13 years. He dumped the body in a pit latrine after the murder.
3. The Petitioner alleges that he has reformed and has submitted that the 25 years he has spent in prison be deemed adequate. He was 35 years when he was convicted.
4. The prosecution submitted that the crime committed was a pre-meditated offence against a minor whose only fault was that he reported the relationship between the Petitioner and the minor girl.
5. The prosecution submitted that the Petitioner should be jailed for a total of 35 years to send a strong message to would be offenders.
6. I have carefully considered the petition and submissions of the parties. The offence committed by the Petitioner was so grave and meted against a very innocent minor. That kind of offence must be sufficiently punished so that a clear message is sent out to the public that there is no place for pre-meditated murder.
7. I have considered the age when the Petitioner was convicted. He was 35 years. He understood the consequences of his action and indeed this is why he dumped the body of his victim into a pit latrine.

8. In my view a deterrence sentence is necessary. I have considered that the Petitioner has been of good character in prison. This is a matter in which I would consider giving a sentence of 60 years. However, because the Petitioner is of good character in prison and there is a good report about him in prison, I herewith do jail him to serve a sentence of 35 years including the time already served in jail.

9. The right to appeal remains to be exercised in 14 days.

That is the Judgment of the Court.

**Dated, Signed and Delivered in Mombasa this 24<sup>th</sup> day of July, 2019.**

**E. K. OGOLA**

**JUDGE**

In the presence of:

Mr. Fedha for DPP

Petitioner in person

Mr. Kaunda Court Assistant