



**REPUBLIC OF KENYA**

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

**CRIMINAL MISC. APPLICATION NO. 29 AND 16 OF 2019 (CONSOLIDATED)**

MUSEE MUSILI..... 1<sup>ST</sup> APPLICANT

NYERERE MUNYWOKI.....2<sup>ND</sup> APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

**RULING**

1. Musee Musili in Criminal Misc. Application No. 29 of 2019 and Nyerere Muniwoki in Criminal Misc. No. 16 of 2019 have moved court for resentencing pursuant to their conviction and sentence in Mwingi Criminal Case No. 858 of 2010 on 15/3/2013.
2. They had been sentenced to death in above matter after conviction on offence of robbery contrary to section 296 (2) of the Penal Code Cap 63 Laws of Kenya. This is after their colleagues their co-accused Issack Kimanzi Musee, Joseph Mutio Mbuko and Eric Mwanzia Mbiti in High Court Criminal Misc. Application No. 22 of 2018, 23 of 2018 and 35 of 2018 consolidated in High Court Garissa succeeded in having death sentence set aside and re-sentenced by this court.
3. The applicants herein seek to be referred back to Mwingi Court for re-sentencing after this court sets aside death sentence.
4. In the case of **Muruatetu & Another vs Republic [2017] eKLR** the Supreme Court declared mandatory death sentence unconstitutional thus triggering these types of applications.
5. On 25/2/2012 after mitigation the trial court stated that:

**“The offence each of the accused have been convicted of carry a mandatory one type of sentence. Thus each sentenced to death.”**

6. Thus the court did not consider their mitigations.
7. In line with the aforesaid case of Muruatetu above I do set aside the sentence of death accordingly. The 2 applicants have sought to be referred back to Mwingi Law Court for re-sentencing.
8. I agree with their request. Thus I order:-
  - (i) **The death sentence in Mwingi Criminal Case No. 858 of 2010 is hereby set aside.**
  - (ii) **The 2 accused persons are hereby to be presented to Mwingi Law Courts with file No. 858 of 2010 for re-sentencing accordingly after the court considers their mitigations.**
  - (iii) **Orders accordingly.**

**DATED, SIGNED AND DELIVERED AT GARISSA THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2019.**

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**C. KARIUKI**

**JUDGE**