

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL MISC. APPLICATION NO 4 OF 2019

ABDILATIF OSMAN.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant was with others charged with offence of robbery with violence contrary to section 296(2) of the Penal Code. Particulars being that on 25/4/2005 at 9 pm while armed with knife robbed James Nderitu Khsh. 1,400/= and at the same time assaulted the same Nderitu.
2. He pleaded not guilty and was convicted of the offence in his mitigation he said that he prayed for court to look the case carefully.
3. They were mandatory sentenced to suffer death on 1/8/2006.
4. He lodged High Court Criminal Appeal No. 119 of 2006 in Meru which was dismissed subsequently he filed Court of Appeal No. 119, 123 and 124 of 2008 consolidated which was heard and also dismissed.
5. He has lodged instant application for re-sentencing. He relies on Supreme Court of Kenya Case No. 15 & 16 of 2015 – Muruatetu where court declared the mandatory aspect of the death sentence is unconstitutional. The State did not object to the re-sentencing.
6. The court having perused the above Supreme Court decision and take into account that the re-sentencing is not opposed by State, it is hereby ordered:

(1) The death sentence made by the trial court in Criminal Case No. 7 of 2005 Wajir on 1/8/2006 is hereby set aside.

(2) The file is referred back to Wajir Law Courts for the Magistrate Court to re-sentence the applicant after hearing the applicant's mitigation.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 29TH DAY OF OCTOBER, 2019.

.....

C. KARIUKI

JUDGE