



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

PETITION NO. 12 OF 2018.

(Arising from the Original CR. No. 1564 of 2009 CM's Bungoma).

GODFREY JUMA MUKARA.....PETITIONER

VERSUS.

REPUBLIC.....RESPONDENT

JUDGMENT.

The appellant Godfrey Juma Mukara was charged in Bungoma CM CRI. No. 1564/2009 with the offence of robbery with violence Contrary to Section 296(2) of the Penal Code. **That particulars of the offence were that;** On the night of 11th June 2009 at Murande Village in Bungoma South District within the Western Province the accused jointly while armed with dangerous weapons namely an axe, robbed ISAAC WEKESA MBWONYA of one Motor cycle make TVS – Star Engine No. of 5K81470472 valued at Kshs.90,000/= and at or immediately before or immediately after the time of such robbery used actual violence to the said **ISAAC WEKESA MBWONYA.**

After full trial on 16.11.2010 he was found guilty convicted and sentence to death as per the law. Dissatisfied with the conviction and sentence, the applicant appealed to the High Court Bungoma in Bungoma H.CR. Appeal No. 122/2010. By Judgment dated 20th May, 2011 the High Court Muchemi and Onyancha Judges dismissed the appeal and upheld the conviction. The applicant then appeals to the Court of Appeal In Eldoret C.A. CR. Appeal No. 204/2011. The court of Appeal, Maraga, Musinga and Gatemba JSA by Judgment delivered on 25th June, 2015 after re-evaluation of the evidence found the applicants conviction was well merited and dismissed the appeal.

The applicant then filed this application dated 13th November 2018 seeking;

- 1. The Honourable court may consider my petition of utmost urgency to be placed before your honourable bench for Determination immediately.**
- 2. I was convicted to serve death sentence which was later commuted to life by the president.**
- 3. I was convicted on a charge of Robbery with violence.**
- 4. The mandatory death sentence imposed upon in the petition nor is unconstitutional, arbitrary, inhuman, excessive and demeaning contrary the Article 26 and 25(i) of the constitution 2010, leading to unfair trial as it denied the trial magistrate an opportunity to consider mitigation factors.**
- 5. The Supreme Court made a ruling over a similar case in Petition No. 15 of 2015 by FRANCIS KETIAKO MURUATETY & ANOTHER Vs. REPUBLIC, Judgment delivered on 4th December, 2017.**
- 6. The Decisions of Supreme Court are binding over other Courts as provided in Article 163 of Constitution 2010.**
- 7. I am a reformed, trained and a law abiding citizen.**
- 8. My fundamental rights were threatened, infringed, denied and violated contrary to the Constitution 2010.**
- 9. CITE: DOUGLAS MUTHAURA NTORIBI IN MISC. APPL. NO. 4 OF 2015 at MERY HIGH COURT, JOHN NGANGA GACHURU AND ANOTHER HCCRA NO. 31 OF 2016 HIGH COURT, JOHN NGANGA GACHURU & ANOTHER HCCRA NO. 2016 AT KIAMBU HIGH COURT.**

The applicant in his submissions to this court submits that he was sentenced to suffer death. Imposed on him has deprived of his

constitutional rights which is a violation of his fundamental rights. He submits that the Supreme Court has declared death sentence unconstitutional. He therefore prays that the sentence be vacated. He has also set out his mitigation circumstances including the fact that he has returned, while in person.

The applicant in Paragraph 2 of his affidavit readily admits that although he was sentenced to death, the same was commuted to Life imprisonment by the President. He is not therefore under any threat to suffer death his sentence having been commuted. This application in respect of review of the death sentence imposed has therefore been overtaken by events as there is no existing death sentence to be set aside.

The applicant in his submissions lay emphasis on the decision by Supreme court in *Petition No. 15/2015 Francis Kiboko Muruatetu & Another Vs. Republic*. That decision in my understanding did not declare the death penalty unconstitutional. It is only the Mandatory nature that was declared unconstitutional. That is, it is no longer mandatory to impose out the death sentence. The Supreme Court stated;

Accordingly, with regards to the claims of the petitioners in this case, the Court makes the following Orders:

a) The mandatory nature of the death sentence as provided for under Section 204 of the Penal Code is hereby declared unconstitutional. For the avoidance of doubt, this order does not disturb the validity of the death sentence as contemplated under Article 26(3) of the Constitution.

In this application, I have perused the proceedings in the trial Court. The Petitioner was indeed given opportunity to Mitigate. The proceedings showed;

Court Prosecutor: They may be treated as first offenders. We do not have records.

Accused In mitigation: Njalale for 1st Accused. The 1st accused is a first offender. He is a family man and only breadwinner. He is remorseful of the act. He prays for leniency.

2nd Accused: I have to mitigate that Judgment has been made. I am a parent. I have children who depend on me. I do not have anybody else to assist. The offence facing me is not clear.

The applicant even considering the mitigation this court does not find any reason for a hearing on re-sentencing. This application is therefore dismissed.

Dated and Delivered at BUNGOMA this 29th day of Nov, 2019.

S.N.RIECHI

JUDGE