

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

CRIMINAL MISC. APPLICATION NO. 34 OF 2019

ABDIRAHAMAN ALI ANO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant was charged with an offence of robbery with violence contrary to section 296(2) of the Penal Code (Cap. 63 Laws of Kenya) in which he was found guilty, convicted and sentenced to death.
2. He appealed to the High Court vide Garissa HCCRA No. 6 of 2011 but after the hearing the appeal was dismissed.
3. He has now moved court via the window created by the Supreme Court case of *Muruatetu* which held that the mandatory aspect of the death sentence is unconstitutional.
4. He now seeks to be resented as the trial court held that the death sentence was mandatory. This does not mean after considering mitigation the trial court can still impose death sentence if circumstances so dictates. Death sentence is not unconstitutional and court can always impose it after considering the circumstances of the matter.
5. The prosecution does not oppose the application but proposes the mater be remitted back to the trial court for resentencing. Thus this court makes the following orders:-

(i) The death sentence imposed by trial court in CRCNo. 345 of 2011 Garissa is set aside.

(ii) The file is remitted back for resentencing after consideration of accused's mitigation.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 28th DAY OF NOVEMBER, 2019.

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C. KARIUKI

JUDGE