



**THE REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO. 217 OF 2018**

**PETER KARIUKI MBURU.....PETITIONER**

**VERSUS**

**THE DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT**

**JUDGMENT**

1. The Petitioner herein was charged and convicted with Robbery with Violence contrary to Section 296 (2) of the Penal Code in Kiambu Chief Magistrate's Court Criminal Case No. 411 of 2008 and sentenced to death. The Petitioner subsequently lodged a first appeal before the High Court and a second appeal in the Court of Appeal.

2. Brief facts of the case are that on 20<sup>th</sup> January, 2008 at about 7:15 p.m the Petitioner in the company of another person not known to the complainant, visited the complainant at her home in Kangondo Village in Kiambu County who welcomed them assuming they had come to settle his two months arrears which he owed and upon being served tea and supper, they both turned against the Complainant drawing a machete and demanding money from the complainant and threatening to chop off her head. That the two robbed her of Kshs. 12, 340, a Nokia Phone, a Sony TV, A Philips DVD Player, Cassettes and remote controls.

3. The Petitioner now claims that the sentencing to death by the trial court as well as the two appellate courts was an infringement of his fundamental rights. The Petitioner avers that the said courts interpreted the provisions of Section 296(2) of the Penal Code to mean that death sentence was the only sentence available to the Petitioner and that the said courts held the view that the death sentence under the said provisions was mandatory and no other sentence was tenable.

**Hearing and Submissions**

4. The matter came up for hearing on 24<sup>th</sup> September, 2019.

5. It was the Petitioner's submissions that he was convicted since 2008 when he was 42 years and has been in prison for 10 years. That he has a wife and a child to whom he would wish to go back. That further he suffers from T.B since 16<sup>th</sup> September, 2009 and fractured ribs as a result of the illness.

6. The Respondent (DPP) through its Counsel Mr. Fedha submitted that the Petitioner should be jailed for 18 years since he has already served 10 years.

**The Determination**

7. On the issue of sentence, the Supreme Court case in the case of **Francis Karioko Muruatetu & Another -vs- Republic [2017] eKLR** declared the mandatory nature of the death sentence as provided for under Section 204 of the Penal Code to be unconstitutional. To that extent this court only has to resentence the Petitioner.

8. I have perused the Petitioner's Progress Report. I have also considered Petitioner's mitigation. The crime that was committed by the Petitioner is very grave. They also had the audacity to be fed by the Complainant then turn around and rob her. This Court must send a clear warning to would be robbers that they would not escape the full force of the Law. I accordingly jail the Petitioner for a total of 22 Years from the date of Conviction.

9. Right of Appeal within 14 days.

**Dated, Signed and Delivered in Mombasa this 28<sup>th</sup> day of November, 2019.**

**E. K. O. OGOLA**

**JUDGE**

In the Presence of:

Mr. Fedha for DPP

Petitioner in Person.

Mr. Kaunda- Court Assistant