



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**(CORAM: CHERERE-J)**

**CRIMINAL PETITION NO. 59 OF 2019**

**BETWEEN**

**AHMED SHABAN ODHIAMBO.....PETITIONER**

**AND**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

**Introduction**

1. On 15<sup>th</sup> August, 2008, the trial court in **NYANDO CRIMINAL CASE NO.1538 OF 2006**, convicted and sentenced the Petitioner to death for the offence of robbery with violence contrary to section **296(2)** of the Penal Code. Petitioner lodged an appeal **KISUMU HIGH COURT CRIMINAL APPEAL NO. 124 of 2008** which was dismissed by a judgment dated 03rd August, 2010. The Petitioner does not appear to have appealed to the Court of Appeal.

2. The Petitioner has petitioned this court for resentencing. He expressed remorse and stated that he was arrested on 17th August, 2006 and has been in custody since then.

3. Ms. Gathu, Senior Prosecution Counsel for the state submitted that the offence was heinous and complainants were injured during the robbery and recommended that Petitioner be resentenced to 20 years.

**Analysis and Determination**

4. At the time of the petitioner's conviction, death was the only available sentence for robbery with violence.

5. The Supreme Court's decision in **Francis Kariuki Muruatetu & Another v Republic & 5 others [2016] eKLR** declaring the mandatory death sentence unconstitutional has necessitated resentencing of all persons previously sentenced to the mandatory death sentence.

6. I have considered ***The Sentencing Policy Guidelines, 2016*** and its application which is intended to promote transparency, consistency and fairness in sentencing (See **Michael Kathewa Laichena & another v Republic [2018] eKLR**).

7. Under the proviso to **section 333(2)** of the ***Criminal Procedure Code (Chapter 75 of the Laws of Kenya)***, the court is entitled to take into account the period the petitioner has spent in custody in determining the sentence.

8. The complainant was robbed and wounded. The Petitioner has trained and achieved a certificate of participation in income generating projects.

9. Petitioner was a first offender. The court record shows that the petitioner has served 11 years and 4 months since the date of conviction.

He is re-sentenced to **15 years'** imprisonment from **15<sup>th</sup> August, 2008** when he was convicted.

**DELIVERED AND SIGNED IN KISUMU THIS 18<sup>th</sup> DAY OF *December* 2019**

**T. W. CHERERE**

**JUDGE**

In the presence of-

**Court Assistant** - **Amondi/Okodoi**

**Petitioner** - **Present in person**

**For the State** - **Ms. Gathu**