



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**CRIMINAL MISC APPL NO.135 OF 2019**

**PAUL KARANJA NJOROGE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. This is a ruling on application dated 25<sup>th</sup> April 2018 by the petitioner herein seeking resentencing. The petitioner averred that he was convicted for an offence of **robbery with violence contrary to section 296 (2) of the penal code**. He was sentenced to death but the sentence was later committed to life imprisonment.
2. The petitioner averred that he was not accorded a fair trial by the trial court in sentencing and cited the case of Muruatetu, which declared death sentence unconstitutional.
3. He submitted that it is true he participated in several robberies by invading several petrol stations which include Kihara and Hyrax filling stations. He stated that he has been in prison for 28 years and while in prison has done several courses which include carpentry and joinery grade I, II & III and has also undergone primary education and obtained KCPE certificate. He said that he joined high school and he is in form III now.
4. He further stated that he has also been trained in counselling and has been using training skill he obtained in counselling people in prison. He said that at the time he was arrested, he was 28 years old and he is now 55 years old. He prayed for court’s leniency; he prayed to court to order that the sentenced he has served to be enough.
5. The applicant further informed the court that his brother was in court and was willing to assist him reintegrate to the community.
6. I do agree with the petitioner’s averments that the Supreme Court in Muruatetu case has declared the sentence imposed unconstitutional. His sentence was commuted to life imprisonment. I agree with the court’s determination that discretion to sentence should not be taken away as it renders mitigating factors superfluous.
7. I have considered the fact that the applicant is remorseful of the offence he was convicted of 28 years ago. It is also evident that while in prison he has undergone several trainings, which will assist him, earn a living and contribute to the community. No adverse report against him has been filed.
8. From the foregoing, I find that the 28 years period the applicant has served have rehabilitated him. He has reformed and in my view, he is fit to be reintegrated to the society. He will no longer be a danger to the community around him but his presence will benefit his family and the community at large. The sentence he has already served is satisfied.

**9. FINAL ORDER**

- 1. Sentence against applicant is set aside.**
- 2. The applicant to be released forthwith unless lawfully held.**

**Ruling dated, signed and delivered at Nakuru this 17<sup>th</sup> day of December, 2019.**

**RACHEL NGETICH**

**JUDGE**

**IN THE PRESENCE OF:-**

Schola/Jenifer - Court Assistants

Appellant in person

Kimwei for state