REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CONSTITUTIONAL PETITION NO. 2 OF 2018.

IN THE MATTER OF: CONSTITUTIONAL INTERPRETATION, PROTECTION AND ENFORCEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 2 (1), 2 (4), 19, 20 (1) (2) (3) (b) (4) (a) (b), 21 (1), 22 (1) (2) (b), 23, 165 (3) (b), 159, 258, 259 OF THE CONSTITUTION 2010.

AND

IN THE MATTER OF: IN THE MATTER OF CONSTITUTIONAL INTERPRETATION AND THE ALLEGED CONTRAVENTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 27 (1) (2), 48 AND ARTICLES 50 (1) (2) (P) OF THE CONSTITUTION OF KENYA, 2010.

AND

IN THE MATTER OF: SECTION 216 OF THE CRIMINAL PROCEDURE CODE.

IN THE MATTER OF: SECTION 296 (2) OF THE PENAL CODE.

AND

IN THE MATTER OF: THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013.

BETWEEN

ERIC OMONDI OKELLO.....PETITIONER

VERSUS

REPUBLIC (THROUGH THE DIRECTOR

OF PUBLIC PROSECUTIONS).....RESPONDENT

JUDGMENT

1. The Petitioner herein **ERICK OMONDI OKELLO** brings this petition against the Respondent being **THE DIRECTOR OF PUBLIC PROSECUTIONS** by way of a Petition dated 19th September, 2018.

2. The background to the petition is that the Petitioner-**ERICK OMONDI OKELLO** was charged, convicted and sentenced to serve death penalty in Ukwala Principal Magistrate's Court in Criminal Case No. 484 of 2010 for the offence of **Robbery with violence contrary to Section 296(2) of the Penal Code**.

3. The Petitioner was however dissatisfied with the conviction and sentence, hence filed an Appeal to the High Court at Kisumu but his appeal was dismissed. Still not satisfied with the dismissal of his appeal, he lodged another appeal at the Court of Appeal where yet again the second appeal was dismissed. The Petitioner then filed this petition seeking for a rehearing of sentence in which he seeks discretion of this court to reconsider and review the death sentence meted out on him which was commuted to life imprisonment.

4. It is alleged in the Petition that Article 2(1) of the Constitution of Kenya pronounces the supremacy of the Constitution and asserts that the constitution binds all persons and state organs at both levels of government and that Article 2 (4) provides that any act or omission in contravention of the Constitution is invalid, while Article 19 is to the effect that the Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies and the purpose of recognizing and protecting human rights and

fundamental freedoms is to prove social justice and the realization of the potential of all human beings which rights belong to every individual and are not granted by state and are only subject to limitations contemplated by the Constitution.

5. That t courts of law and other authorities are enjoined under Article 20 (3) (b) to adopt an interpretation that most favours the enforcement of a right or fundamental freedom while applying a provision of Bill of Rights and to promote value that underlie an open and democratic society, based on human dignity, equality, equity and freedoms, the spirit and purport and objects of the Bill of Rights.

6. Further, that the law is not clear as to what would constitute robbery with violence under Section 296 (1) and what constitutes robbery under Section 296 (2) of the Penal Code as was held in ***Joseph Kaberia Kahinga and 11 others V Attorney General NRB HC Petition No. 618 of 2010 (2016) eKLR***,and that by this ambiguity, the Petitioner's right to a fair trial as enshrined under Article 50 (2) (b) have been violated as the same could not allow the Petitioner in the circumstances to prepare and defend himself.

7. That the Petitioner herein has legitimate expectation to enjoy the full benefit and protection of the law and that this right was violated when he was sentenced to serve a harsher sentence (death sentence) thus contravening his rights under Article 50 (2) (p) of the Constitution of Kenya 2010, which decrees that a convicted person should benefit from the least severe of the presented punishment(s) for an offence and therefore seeks the following orders:

> ***(a) A declaration that the death sentence imposed by the trial court, confirmed by the high court and the court of appeal and later commuted to life imprisonment by the president, is in contravention of Article 50 (2) (h) (p) of the Constitution of Kenya 2010.***
>
> ***(b) A declaration that ambiguity and disparity exhibited in the application of Section 296 (2) of the Penal Code is in grave contravention of right to fair trial under Articles 50 (2) (b) and 27 of the constitution of Kenya 2010.***
>
> ***(c) A declaration that the constitutional rights of the petitioner have been violated.***
>
> ***(d) An order to have the sentence of death imposed against the petitioner be set aside.***
>
> ***(e) An order, in the alternative to have the case be reviewed in the interest of justice and mitigation be taken afresh for determination of proportionate sentence in line with Article 50 (2) (p) of the constitution of Kenya 2010.***
>
> ***(f) Costs of the petition.***
>
> ***(g) Any other or further relief that the honourable court considers appropriate and just to grant.***

8. The Petition is supported by the Sworn Affidavit of **ERICK OMONDI OKELLO** who is the Petitioner dated 8thFebruary, 2018 in which he reiterates the above averments and places emphasis on the fact that he (the Petitioner) attempted to mitigate but the same was not put into account as the trial court stated vividly that the death penalty was mandatory notwithstanding the circumstance of the case yet pursuant to the provisions of article 50 (2) (P) and section 216 of the criminal procedure code, the trial magistrate ought to have put into consideration mitigation put forth by the petitioner in determining a proportionate sentence which was less severe than the death sentence that was eventually pronounced.

9. In addition, that section 296(2) of the Penal Code is ambiguous and not distinct enough to enable any person charged under the section aforesaid to prepare to defend himself due to the clarity on what constitutes an offence.

10. The Petitioner filed submissions through his advocate and stated that the petition herein has been actuated by the supreme court decision in ***Francis Muruatetu & Another V Republic SCK Pet No. 15 and 16 of 2015 (2017) eKLR*** where the court declared the mandatory death sentence for the offence of murder unconstitutional.

11. He further submitted that in the Court of Appeal case of ***William Okungu Kittiny V Republic KSM CA Criminal Appeal No. 56 of 2013 (2018) eKLR***, the court applied the **Muruatetu case** mutatis mutandis to the provisions of section 296 (2) of the penal code which imposes the mandatory death penalty for the offence of robbery with violence and it held;

> ***"…from the foregoing, we hold that the findings and holding of the supreme court particularly at paragraph 69 applies mutatis mutandis to section 296 (2) and 297 (2) of the penal code. Thus the sentence of death under section 296 (2) and 297(2) of the penal code is a discretionary maximum punishment. To the extent that section 296 (2) and 297 (2) of the penal code provides for a mandatory sentence, the sections are inconsistent with the constitution".***

12. That the Supreme Court also pointed out that the death penalty is still the maximum sentence for the offence of robbery with violence under Section 296 (2) of the Penal Code. However, that if in the course of robbery, no incident of death ever occurred, then the death sentence should not be meted out as was the position in ***Michael Kathewa Laichena& Another v Republic (2018) eKLR.***

13. The appellant reiterated in submission that in the present petition, the petitioner has invoked the jurisdiction of the court for re-sentencing purposes only.

14. He framed the issue emerging from the Petition being whether the Petitioner is entitled to the prayers sought.

15. It was thus submitted that this court has jurisdiction to review and re-sentence the Petitioner and as such rely on the High court decision in ***Michael Kathewa Laichena Another v Republic (2018) eKLR***. Further, that the tenor and effect of the Court of Appeal decision in

William Okungu Kittiny V Republic KSM CA Criminal Appeal No. 56 of 2013 (2018) eKLR is that the High Court may review and re-sentence Petitioners who come before it by way of Petition or Appeal as the Supreme Court did not foreclose that avenue of resentencing.

16. That further, the Supreme Court underlined the fact that sentencing is a judicial task hence a Task Force of the kind appointed by the Attorney General cannot review and sentence Petitioners and that since the High Court has unlimited jurisdiction in civil and criminal matters and is also the court imbued with jurisdiction to enforce fundamental rights and freedoms under Article 165 (3) of the constitution, it is the proper forum for resentencing.

17. That the court in ***Kathewa case*** further held ***"that the right of a person sentenced to death to seek relief is clearly grounded on the fact that the supreme court in Muruatetu's case found the mandatory death penalty unconstitutional and a violation of fundamental rights and freedoms. Thus by resentencing the petitioner, the high court is merely enforcing and granting relief for what is in effect a violation caused by imposition of the mandatory death sentence. For the reasons I have set out, I am satisfied that I have jurisdiction to consider this petition for resentencing".***

18. It was further submitted that in respect of the factors that ought to be considered in so far as sentencing is concerned, the court be guided by the Sentencing Policy Guidelines, 2016 that is inter-alia; that sentence imposed by the courts should meet the following objectives; retribution, deterrence, rehabilitation, restorative justice, community protection and denunciation and stated that the High Court in the ***Kathewa case*** while expounding on the guidelines, observed that:

> ***"The sentencing policy guidelines, 2016 ("The Guidelines") published by the Kenya judiciary provide a four tier methodology for determination of a custodial sentence. The starting point is establishing the custodial sentence under the applicable statute. Second, consider the mitigating circumstances or circumstances that would lessen the term of the custodial sentence. Third, aggravating circumstances will go to increase the sentence. Fourth, weigh both aggravating and mitigating circumstances. Since the Guidelines did not take into account the fact the death penalty would be declared unconstitutional, the Court in the Muruatetu Case (Supra, para. 71), held considered mitigating factors that would be applicable in re-sentencing in a case of murder as follows; (a) age of the offender;(b) being a first offender;(c) whether the offender pleaded guilty;(d) character and record of the offender;(e) commission of the offence in response to gender-based violence;(f) remorsefulness of the offender;(g) the possibility of reform and social re-adaptation of the offender;(h) any other factor that the Court considers relevant."***

19. Thus the petitioner submitted that sections 295, 296 (1), 296 (2), 297 (1) and 297 (2) of the Penal Code have been declared unconstitutional in ***Joseph Kaberia Kahinga and 11 others V Attorney General NRB HC Petition No. 618 of 2010 (2016) eKLR***, and urged the couirt to take 14 years imprisonment as the starting point as a mandatory minimum sentence for the offence of robbery with violence as was held in the case of ***Michael Kathewa Laichena& Another V Republic (2018) eKLR, John Kathia M'itobi v Republic (2018) eKLR*** and ***Francis Kamwithu V Republic (2018) eKLR where*** the court in the cited case sentenced the petitioners for 15 years imprisonment from the date of conviction at the trial court.

20. It was submitted that in this Petition, the course of robbery at the Umala Sub-Location, only the motor cycle and Nokia mobile phone were stolen. Adding that the Petitioner has since rehabilitated and therefore urged the court in sentencing the accused, to take into account the period spent in pre-trial custody by dint of the proviso to Section 333 (2) of the Criminal Procedure Code. The petitioner urged the court to sentence the Petitioner for 14 years.

21. In oral submissions in court on the 31/10/2018, counsel for the petitioner, stated in addition to the above that the Petitioner is aged 32 years and has been in prison from November 2010, that he found himself in the problem due to poverty. Adding however, that the Petitioner has learnt metal work and if he gets out, will provide employment for the youth and also that the stolen vehicle was recovered and taken back to the complainant.

22. Mr. Okachi the Prosecution Counsel for the respondent on the other hand did not say much but left the matter to the court to decide.

DETERMINATION

23. I have carefully considered the Petition, the grounds by the Petitioner and the Petitioner's subsequent submissions, authorities in support and the orders sought and in my humble view, the issues for consideration in this Petition are:

(1) ***Whether the death sentence is unconstitutional/ in contravention of the constitution;***

(2) ***whether section 296 (2) of the penal code is ambiguous;***

(3) ***whether the petitioner is entitled to have his case reviewed and mitigation considered for sentence;***

24. On issue 1, the death sentence is not unconstitutional as it is one of the prescribed sentences within the discretion of the court and the Supreme Court in the ***Muruatetu case*** only stated that death penalty was not the only sentence available in capital offences. Furthermore, the Constitution under Article **26**provides that:

> ***26 (1) Every person has the right to life.***
>
> ***(2) The life of a person begins at conception.***
>
> ***(3) A person shall not be deprived of life intentionally, except to the extent authorised by this Constitution or other written law.***

25. Under Article 24, a right or fundamental freedom in the Bill of Rights shall not be limited except by law, meaning by statute and in our case the -Penal Code- may limit one's right to life. In addition, the petitioner in his petition also alludes to this fact by stating that rights belong to every individual and are not granted by state and are only subject to limitations contemplated by the Constitution.

26. Further, sentencing being in the discretion of the court, it is therefore for the court to exercise its discretion if the circumstances of the case connote that a death sentence will be the most appropriate then the court may impose such sentence, as long as the mitigating factors have been taken into account. This is not to say that mitigating factors would lower lower the death sentence.

27. Accordingly, I find and hold that the argument by the Petitioner in his Petition that ***his right was violated when he was sentenced to serve a harsher sentence (death sentence) thus contravening his rights under Article 50 (2) (p) of the Constitution of Kenya 2010, which decrees that a convicted person should benefit from the least severe of the presented punishment(s) for an offence does not hold water.***

28. However, it was for the trial court to consider the prevailing circumstances of the case and hear out the mitigating circumstances in favour of the offender now Petitioner and if persuaded that the death sentence was the most appropriate notwithstanding the mitigations then, then the sentence cannot be termed to be in contravention of or a violation of the Petitioner's rights, unless it can be shown that the trial court clearly stated that the mitigation of the accused was immaterial or was not considered.

29. On the second issue, the case of ***Joseph Kaberia Kahinga and 11 others V Attorney General NRB HC Petition No. 618 of 2010 (2016) eKLR*** is relevant. It was stated:

> ***"….There is nothing under Section 296(2) of the Penal Code which distinguishes aggravated robbery from the robbery under sub-section (1) of Section 296 of the Penal Code which only sets out the penalty. The definition of what constitutes robbery is found in Section 295 of the Penal Code. The sections do not set down any aggravating circumstances that would create particularity and clarity as to what constitutes robbery and what constitutes aggravated robbery. There is nothing under Sections 295 and 296 of the Penal Code to guide the courts, and indeed the investigators and prosecutors, in assessing which sets of facts and circumstances would qualify to constitute either of these two offences.***
>
> ***We are aware of the additional ingredients under Section 296(2) of the Penal Code which, if any one of them is proved, would be sufficient to establish the offence of aggravated robbery. A close scrutiny of these three additional ingredients does not make the situation any different. The first ingredient is if one is armed with a dangerous or offensive weapon or instrument; the second, if one is in company with one or more other person(s); and, third, if one* wounds, beats, strikes or uses any other personal violence to *any person. The third ingredient is superfluous as under Section 295 of the Penal Code, the element of use of actual violence is included as an ingredient of the offence termed robbery. That implies that only the first two ingredients remain as the additional ingredients, either one of which if proved would sustain a charge of robbery under Section 296(2) of the Penal Code. It therefore means that once it is established that the person committed the offence in the company with one or more person(s), or alternatively that he was armed with dangerous or offensive weapon or instrument, then aggravated robbery is established. The question then is; does it mean that robbery under Section 296(1) of the Penal Code can only be preferred where a lone person commits the offence and that once there is evidence the offence was committed by more than one person then it implies that the two or more persons should be charged under Section 296(2) of the Penal Code"***
>
> ***Further, what constitutes a dangerous weapon has not been defined, and that is an issue which has drawn conflicting interpretations from various courts. While some instruments or weapons would be obvious without the need of defining them, there are others which are not as obvious. For instance, under the definition of dangerous or offensive weapon, it includes at one extreme a stone or stick and the other extreme a firearm. The point we are making is that the law is not clear what circumstances would constitute robbery under Section 296(1) of the Penal Code, and what constitutes robbery under Section 296(2) of the Penal Code.***
>
> ***After a careful consideration of the two sub-sections of Section 296 of the Penal Code we are in agreement that t*****he two sub-sections disclose a lack of sufficient particularity and clarity to distinguish between an offence committed under Section 296(1) and that which is taken to be committed under Section 296(2) of the Penal Code. In both instances, there are common ingredients of theft accompanied by either threat or the use of actual violence".**

30. The view of this court is that the above holding does not negate the fact that the evidence tendered at the trial proved the necessary ingredient of the offence of robbery with violence. In my view, the sections contemplated that there can be a robbery without the presence of the victim and Section 296(2) comes in to factor in the possible danger and turmoil occasioned to a present victim hence its gravity.

31. Accordingly I find no ambiguity in the section aforementioned.

32. On issue 3, the court in **FRANCIS OPONDO VS. REPUBLIC, CRIMINAL APPEAL NO. 13 OF 2015** citing Article 50 (p) of the Constitution at paragraph 7, stated:

> "***In the case of a convicted criminal prisoner, the least severe sentence is the one to which remission has been applied***".

33. Remission referred to in the above case is similar to mitigation factors. Therefore, as there is no legal justification to discriminate offenders serving sentences under Section 296 of the Penal Code from being motivated into rehabilitation as is done to other offenders in that, one is not to be accorded differential treatment for reasons that they have committed a different offence from another yet the offence of robbery with violence is also a capital offence like murder, which latter offence thanks to the ***muruatetu case***, offenders convicted with the offence of murder get to enjoy the benefits of courts' discretion, it follows that convicts under Section 296 (2) should also be accorded the discretion in matters sentencing.

34. In my humble view, Section 296 (2) of the Penal Code in its present landscape curtails the discretion of the court in a mandatory manner, which the Supreme Court in the Muruatetu case abhorred. The Supreme Court held the view that all persons shall be equal before the courts and tribunals in the determination of any criminal charge against him, or of his rights and obligations in a suit at law. The apex court stated:

> 53. ***"If a Judge does not have discretion to take into account mitigating circumstances it is possible to overlook some personal history and the circumstances of the offender which may make the sentence wholly disproportionate to the accused's criminal culpability….Consequently, failure to individualise the circumstances of an offence or offender may result in the undesirable effect of 'overpunishing' the convict.***
>
> 56. ***we are therefore, in agreement with the petitioners and amici curiae that Section 204 violates Article 50 (2) (q) of the Constitution as convicts under it are denied the right to have their sentence reviewed by a higher Court –their appeal is in essence limited to conviction only.***
>
> ***There is no opportunity for a reviewing higher court to consider whether the death sentence was an appropriate punishment in the circumstances of the particular offense or offender.***
>
> 60. "***Another aspect of the mandatory sentence in Section 204 that we have grappled with is its discriminate nature; discriminate in the sense that the mandatory sentence gives differential treatment to a convict under that Section, distinct from the kind of treatment accorded to a convict under a Section that does not impose a mandatory sentence.***

35. The Supreme Court in the above case also had the occasion of considering the Penal Section as relates to murder vis a vis ***Article 27 of the Constitution*** and ***Article 26 of the ICCPR*** on non- discrimination which provides that:

> ***27. (1) every person is equal before the law and has the right to equal protection and equal benefit of the law.***
>
> ***(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.***
>
> ***Article 26 of the ICCPR provides: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political <u>or other opinion</u>, national or social origin, property, birth or other status.***

36. And the top court stated further that:

> ***"Convicts sentenced pursuant to Section 204 are not accorded equal treatment to convicts who are sentenced under other Sections of the Penal Code that do not mandate a death sentence. <u>Refusing or denying a convict facing the death sentence, to be heard in mitigation when those facing lesser sentences are allowed to be heard in mitigation is clearly unjustifiable discrimination and unfair. This is repugnant to the principle of equality before the law.</u>***
>
> 64. ***<u>Having laid bare the brutal reality of the mandatory nature of the sentence under Section 204 of the Penal Code, it becomes crystal clear that that Section is out of sync with the progressive Bill of Rights enshrined in our Constitution</u> specifically; Articles 25 (c), 27, 28, 48 and 50 (1) and (2)(q). <u>That Section therefore cannot stand, particularly, in light of Article 19 (3) (a) of the Constitution which provides that the rights and fundamental freedoms in the Bill of Rights belong to each and every individual and are not granted by the State</u>, …. A <u>murder convict whose mitigation circumstances cannot be taken into account due to the mandatory nature of the death sentence cannot be said to have been accorded a fair hearing</u>.***

37. The cited case of **<u>Muruatetu</u>** is similar to the Petition herein though the cited case relates to murder and is under a different section which is the only difference. As this petition is a subject of Section 296 of the Penal Code on Robbery with violence whose mitigating circumstances is impeded by the mandatory nature of sentence under section 296 (2) whose wording is such that there can never be any other sentence other than a death sentence.

38. In my humble view, there is need to give credence to offenders' mitigating factors so as to be seen to be interpreting the law in a purposive way that fosters the values enshrined in the Constitution particularly that of equality before the law and to meet the objectives of the criminal justice system.

39. In addition, I am of the view that Section 296(2) of the penal code is in conflict with Section 329 of the Criminal Procedure Code which provides:

> ***"The court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed."***

40. That is to say, by virtue of Section 329 of the Criminal Procedure Code, a court is to apply its mind to the prevailing circumstances of a case, the offence and evidence before it before it can reach at an appropriate sentence. Therefore it would not be wrong to term Section 296 (2) as remorseless, unjust and unfair.

41. The court in discharging its mandate must have an examination into the laws of Kenya and in tandem with Article 259; interpret the Constitution in a manner that fosters/ promotes its purposes and good governance. In the case of **Centre for Rights Education and Awareness & 2 others v Speaker the National Assembly & 6 others [2017] eKLR** the court stated:

"Article 2(1) of the Constitution provides that 'The Constitution is the Supreme Law of the Republic and binds all persons.Article259 of the constitution enjoins the court to interpret the constitution in a manner that promotes its purposes, values and principles, advances the rule of law, human rights and fundamental freedoms in the bill of rights and in a manner that contributes to good governance. This court is obliged under Article 159 (2) (e) of the constitution to protect and promote the purposes and principles of the constitution. Also, the constitution should be given a purposive, liberal interpretation. The Constitution of Kenya gives prominence to national values and principles of governance which include human dignity, equity, social justice, inclusiveness, equality, human rights and Rule of law and that the court is bound to adopt the interpretation that most favours the enforcement of the right to equality and non-discrimination…."

42. In this case I however find that the constitutional rights of the petitioner were not violated. Nonetheless, so as to adopt a proper interpretation of the laws, bearing in mind the case of ***Francis Muruatetu,*** courts faced with a similar situation as was the Supreme Court in the Muruatetu case would be expected to hold that all cases with similar connotations be dealt with in a similar way in line with the doctrine of "***stare decisis,*** " bearing in mind that while what makes two cases the same is not that they have twin identical presentations, for no two situations are identical in every respect, as there will be significant differences between any two cases *yet legally speaking, still be the same*.

43. The foregoing position of substantially similar cases being determined in a similar way was also adopted by the court in the case of **William Okungu Kittiny V Republic KSM CA Criminal Appeal No. 56 of 2013 (2018) eKLR** cited by the Petitioner in his submissions where the court stated:

"…from the foregoing, we hold that the findings and holding of the supreme court particularly at paragraph 69 applies mutatis mutandis to section 296 (2) and 297 (2) of the penal code. Thus the sentence of death under section 296 (2) and 297(2) of the penal code is a discretionary maximum punishment. To the extent that section 296 (2) and 297 (2) of the penal code provides for a mandatory sentence, the sections are inconsistent with the constitution."

44. It is however worth noting that the petition was not brought and or argued under Article 50(6) of the Constitution on review hence this court has not reviewed the evidence adduced in the trial court.

45. Accordingly, I find and hold that the petitioner's petition succeeds to the extent stated and mitigating factors will be considered to avoid discrimination and sentencing being a judicial function which is discretionary in nature, and considering the decision in the ***Kathewa*** [supra]***case*** cited by the Petitioner in his submission in respect of the sentencing guidelines, I would allow the petitioner's petition to the extent that the death sentence meted out on him as a mandatory sentence without taking into account mitigating factors deprives the trial court of the discretionary power of sentencing. The death sentence as commuted to life imprisonment is hereby set aside and the petitioner is hereby allowed to mitigate for resentencing purposes.

Dated, signed and delivered in open court at Siaya this 18th day of December, 2018

R.E.ABURILI

JUDGE

In the presence of:

Mr Ngetich Prosecution Counsel for the Respondent

Mr Okello h/b for Mr Odumbe for the Petitioner

Petitioner present

CA: Modestar and Brenda