



REPUBLIC OF KENYA



KENYA LAW
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**Khateche v Republic (Criminal Petition 36 of 2020)
[2023] KEHC 906 (KLR) (10 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 906 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL PETITION 36 OF 2020
RN NYAKUNDI, J
FEBRUARY 10, 2023**

BETWEEN

HARON JUMA KHATECHE PETITIONER

AND

REPUBLIC RESPONDENT

(Being an appeal arising from conviction and judgment in Eldoret Chief Magistrate's Court in Criminal Case No. 1628 of 2013 delivered by H. Barasa Principal Magistrate on 5/4/2016)

RULING

1. The petitioner required the court pursuant to Article 50(6) (a) and (b) of the constitution for review of sentence of 10 years imprisoned by court on 12/10/2018 of the offence of robbery with violence contrary to section 296 (2) of the penal code. The court decision was based on the strength of the case in *Francis K Rwatetu –vs Republic* (2017) eKLR in which initially the petitioner was serving the mandatory death penalty for the offence of murder contrary to section 203 as read with section 204 of the *penal code*. The supreme court in its finding, held that mandatory death penalty for the offence of murder is unconstitutional for it deprives the trial judges to exercise discretion by giving effect the special circumstances of each case. In the case at bar the resentencing session judge, took into account the guidelines set out in the Muruatitu case and came to a conclusion that the mandatory sentence of death imposed against the petitioner be reviewed and substituted with a custodial sentence of 10 years imprisonment. By this decision of the supreme court the future of mandatory sentences started to take a purposive approach in persuading courts to shift from mandatory minimum sentences. The reason being that they constrain judicial discretion without offering any increased crime prevention benefits. Therefore, the sentencing frame work in our country considers that the imposition of a sentence of any particular offence must adhere to the statutory purposes of sentencing and the application of the developed principals in the emerging case law.



2. The petitioner in this case was initially sentenced to the mandatory death penalty which was later reduced to custodial sentence of 10 years imprisonment. In brief from the record the session judge at the time of resentencing established that there was no extraneous violence and serious physical injury caused to the victim of the robbery. Second, the petitioner was treated as a 1st offender with no previous conviction. Third the petitioner's relative age and his good prospect of rehabilitation. The court further found that no substantial and comparing circumstances existed to warrant the petitioner to be sentenced to mandatory death penalty. In respect to this background I am satisfied that the petitioner has not brought himself within the provisions of article 50(6) (a) and (b) of the constitution for review of the 10 years custodial sentence. For those reasons in terms of section 382 of the Criminal Procedure Code the petition be and is hereby dismissed.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 10TH DAY OF FEBRUARY 2023

.....

R. NYAKUNDI

JUDGE

Coram: Hon. Justice R. Nyakundi

R. K Karanja for the Appellant

Mugun for the State

