



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

PETITION NO 1 OF 2020

(Consolidated with Petition No 17 of 2018)

MICAH MWANGWALE MWATA.....1ST PETITIONER

DENIS MWAMBELA MWAWASI.....2ND PETITIONER

VERSUS

STATE.....RESPONDENT

JUDGMENT

1. The Petitioners were convicted for robbery with violence and jailed to suffer death under counts 1 and 2. The 1st Petitioner was also charged in counts 3 and 4 with possession of firearm and ammunition and sentenced to serve 5 years in each count. The sentences ran concurrently.

2. The circumstances of the robbery was as follows;

1) In the first count the particulars are that on the 15th June 2006 at Shigharo village, Taita Taveta District jointly armed with a pistol and a knife robbed Micheal Mukua of cash Kshs 500/= and at or immediately before or immediately after the time of such robbery threatened to shoot the said Micheal Mukua.

2) In the second count the particulars are that on the above same date and place they also robbed James Gathagui of cash Kshs 50 and at or immediately before or immediately after the time of such robbery threatened to shoot the said James Gathagua.

3) In count three the 1st Petitioner is charged with being in possession of a firearm without a firearm certificate contrary to Section 4(1) as read with section 4(3) of the firearm Act Cap 114, Laws of Kenya.

4) In count four the 1st Petitioner is charged with being in possession of ammunition without a firearm certificate contrary to section 4(1) as read with Section 4(3) of the firearm Act Cap 114, Laws of Kenya.

3. The Petitioners are now in this court for resentencing pursuant to the Supreme Court decision in **Francis Karioko Muruatetu and Another V. Republic (2017) eKLR** in which the apex court held that the mandatory nature of the death sentence is unconstitutional.

4. Ms. Mukangu Learned Counsel for the Prosecution submitted that this court can resentence the petitioner, and that a deterrence jail term of 20 years is adequate punishment for the crimes committed.

5. The Petitioners on their part submitted that the 15 years, they have spent in jail is adequate; that they are first offenders, and the sole bread earner of their families; that they have reformed and are willing to rejoin the society.

6. I have considered the Petitioners' mitigation. Nobody was injured in the robbery. The Petitioners appear to have reformed. The 15 years they have spent in jail is adequate punishment for their crime and it is this court's position that the Petitioners can be released.

7. I therefore herewith set aside the death sentence under counts 1 and 2. I do not interfere with sentences under counts 3 and 4 in respect of the 1st Petitioner. The sentences shall run concurrently.

For the death sentence imposed upon the Petitioners, I hereby jail them to a term equivalent with that already served.

The result is that the Petitioners are hereby released and set free unless otherwise lawfully withheld.

E. OGOLA-JUDGE

12/3/2021