



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

(CORAM: CHERERE-J)

PETITION APPLICATION NO. 128 OF 2018

BETWEEN

JOSPHAT KIGORWE MURURU.....PETITIONER

AND

REPUBLIC.....RESPONDENT

RULING

Introduction

- 1) The Petitioner was tried in **MERU CRIMINAL CASE NO.1062 OF 2000** for three counts of robbery with violence contrary to section **296(2)** of the Penal Code and was on **05th September, 2001** convicted and sentenced to suffer death.
- 2) Petitioner's appeal to the High Court vide **MERU HIGH COURT CRIMINAL APPEAL NO. 301 OF 2001** was by a judgment dated **29th October, 2010** dismissed, the conviction upheld and sentence confirmed.
- 3) Applicant has petitioned the court for resentencing. Ms. Mbithe, learned counsel for the state opposed the application and urged the court to find that the sentence was lawful.

Analysis and Determination

- 4) Whereas I agree with the state that the sentence imposed on the Applicant is lawful, 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 minimum and maximum sentences.
- 5) 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**).
- 6) The offence was committed by the Petitioner and about 10 others. There is no evidence that the complainants were harmed and other than that the Petitioners were on a robbery spree, the offences were not aggravated.
- 7) Although Petitioner has served 10 years' imprisonment, he has not undertaken any training as a way of reformation.
- 8) In the end, the Petitioner is resentenced to **15 years' imprisonment in each of the 3 counts** with effect from **05th September, 2001** when he was sentenced. The sentences shall run concurrently.

DELIVERED AT MERU THIS 13TH DAY OF MAY 2021

T. W. CHERERE

JUDGE

In the presence of-

Court Assistant - Kinoti

Petitioner - Present in person

For the State - Ms. Mbithe