

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 152 OF 2018

JOHN MUTUA MUTUKU.....PETITIONER

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner **John Mutua Mutuku** was arraigned before the Mombasa Senior Resident Magistrate's Court in Criminal Case NO.1008 of 2005 on a charge of robbery with violence contrary to Section 296(2) of the Penal Code. The Petitioner entered a plea of 'not guilty' and his trial began. After the trial, the learned Trial Magistrate found the Petitioner guilty of the said offence, convicted him and sentenced him to death. Being aggrieved by the decision of the learned Trial Magistrate, the Petitioner filed Mombasa High Court Criminal Appeal No.182 of 2006, which the Court dismissed vide its Judgement delivered on 22nd June, 2006. The Petitioner is seeking a re-sentence in the instant Petition pursuant to the Supreme Court's decision in **Francis Karioko Muruatetu & Another v Republic [2017] eKLR**, in which the apex court decided that a mandatory death sentence is against the Constitution.

2. In his submissions the Petitioner stated that he has been in jail for 17 years; that he regretted the offence he committed, and that he has learnt a trade while in prison which will help him to be integrated into the free society. The Petitioner submitted that he used a panga and caused injuries in the victims head.

3. On her part **M/S Wanjohi** learned prosecutor submitted that cutting somebody with a panga is a heinous offence with huge psychological and physical effect on the victim and that for justice to be seen to be done the Petitioner should be jailed for 30 years.

4. I have considered both mitigating and aggravating factors. I agree with the prosecution that cutting somebody with a panga in the head is such a traumatizing experience and this alone deserved a deterrent sentence. I therefore, while lifting the death sentence imposed on the Petitioner, hereby substitute the same with a jail term of 22 years from the date of arrest.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 7TH DAY OF JUNE, 2021

E. K. OGOLA

JUDGE

Judgment delivered via MS Teams in the presence of:

Petitioner in person

Ms. Wanjohi for DPP

Ms. Peris Court Assistant