

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

CRIMINAL PETITION NO. E021 OF 2021

SAMWEL KAHIGA GATHIRE.....PETITIONER

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

The Petitioner, **SAMWEL KAHIGA GATHIRE** has asked this Court to have him re-sentenced in conformity with the pronouncement which the Supreme Court made in the case of **FRANCIS KARIOKO MURUATETU & ANOTHER Vs REPUBLIC PETITION NO. 15 OF 2015**.

1. The Supreme Court declared as unconstitutional, the mandatory nature of the Death Sentence for persons convicted for the offence of Murder.
2. On the strength of that pronouncement, the Court of Appeal declared that the mandatory nature of the Death Sentence would similarly be deemed to be unconstitutional in cases where the offender had been convicted for the offence of **Robbery with Violence**.
3. As the Petitioner was sentenced to suffer death as by law prescribed, following his conviction for the offence of **Robbery with Violence**, this court finds that the said sentence was unconstitutional, because it was imposed on the grounds that that was the mandatory prescribed sentence under **Section 296 (2)** of the **Penal Code**.
4. However, before the court can determine the appropriate sentence, and in order to be in a position to make the appropriate determination, the court will require further information from both the Petitioner and the Respondent.

DATED, SIGNED and DELIVERED at KISUMU This 7th day of July 2021

FRED A. OCHIENG

JUDGE