



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

CRIMINAL PETITION NO. 10 OF 2020

TITUS OWINO OTIENO PETITIONER

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

The Petitioner, **TITUS OWINO OTIENO** was convicted for the offence of **Robbery with Violence** contrary to **Section 296 (2)** of the **Penal Code**. He was then sentenced to suffer death as by law prescribed.

1. His appeal to the High Court was dismissed on 13th July 2010.
2. The Petitioner informed this Court that his appeal to the Court of Appeal was also dismissed.
3. He has now invoked the decision by the Supreme Court in the case of **FRANCIS KARIOKO MURUATETU & ANOTHER Vs REPUBLIC PETITION NO. 15 OF 2015**, and has asked the court to proceed to re-sentence him.
4. The Supreme Court declared the mandatory nature of the death penalty, to be unconstitutional.
5. I have perused the record of the proceedings before the trial court, and noted that after giving to the Petitioner an opportunity for mitigation, the learned trial magistrate said;

“Noted. Accused is a first offender and says as such. However, the offence carries a mandatory sence of death, which ties my hands.

Sentence

Death.”

6. In a nutshell, the trial court believed that regardless of the circumstances in which the particular offence was committed, and notwithstanding the Petitioner’s mitigation, the death sentence was mandatory.
7. It is that notion of a mandatory sentence that the Supreme Court had declared unconstitutional. It therefore follows that the Petitioner was now entitled to being re-sentenced.
8. I have noted that the Complainant was violently robbed of his bicycle. He was hit on the back of his head, whilst he was riding his bicycle.
9. The blow was so massive that the Complainant lost consciousness for about 20 minutes. As a result of the injuries he sustained, the Complainant was admitted in hospital for a whole week.
10. Whilst the Complainant was robbed at about 9.30p.m on 7th October 2008, the Petitioner was arrested at about 10.00a.m on 8th October 2008, after being spotted riding the Complainant’s bicycle. In effect, the Petitioner did not care at all about the injuries inflicted upon the Complainant. If anything, the Petitioner was “enjoying” riding the bicycle which had been obtained through a violent robbery, on the previous night.

11. I have taken into account the circumstances in which the offence was committed. I have also taken into account the mitigation put forward by the Petitioner, immediately after he had been convicted.

12. Thirdly, I have taken into account the one year which the Petitioner remained in custody whilst he was still on trial.

13. Having taken into account all those factors, I now re-sentence the Petitioner to 30 Years imprisonment.

14. Finally, when calculating the actual duration of time which the Petitioner shall spend in prison custody, on account of the sentence, I direct that the same will be discounted by one Year, in compliance with **Section 333 (2)** of the **Criminal Procedure Code**.

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

FRED A. OCHIENG

JUDGE