



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**HCCHR PETITION NO.E001 OF 2021**

**JUSTUS CHERUIYOT CHUMBA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The petitioner herein filed this petition pursuant to the Supreme Court ruling that the mandatory nature of the death penalty is unconstitutional.
2. The petitioner was charged with robbery with violence and sentenced to death.
3. Following the directions given by the Supreme Court that the Muruatetu case does not apply to cases of robbery with violence, this petition cannot be entertained by this court.
4. The Supreme Court of Kenya in Petition no. 15 & 16 (consolidated)- Directions of the court, stated at Paragraph 14 and 15 as follows: "It should be apparent from the foregoing that Muruatetu cannot be the authority for stating that all provisions of the law prescribing mandatory or minimum sentences are inconsistent with the Constitution. It bears restating that it was a decision involving the two Petitioners who approached the Court for specific reliefs. The ultimate determination was confined to the issues presented by the Petitioners, and as framed by the Court. To clear the confusion that exists with regard to the mandatory death sentence in offences other than murder, we direct in respect of other capital offences such as treason under Section 40 (3), robbery with violence under Section 296 (2), and attempted robbery with violence under Section 297 (2) of the Penal Code, that a challenge on the constitutional validity of the mandatory death penalty in such cases should be properly filed, presented, and fully argued before the High Court and escalated to the Court of Appeal, if necessary, at which a similar outcome as that in this case may be reached. Muruatetu as it now stands cannot directly be applicable to those cases."
5. This petition is accordingly dismissed and this file is marked as closed.

**DELIVERED, DATED AND SIGNED AT KERICHO THIS 1<sup>ST</sup> DAY OF OCTOBER, 2021**

**A. N. ONGERI**

**JUDGE**