



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

CONSTITUTIONAL PETITION NO. 16 OF 2019

RONALD SIMIYU NGOYOMALI.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

The petitioner together with another person Alex Wanjala were charged with the offence of robbery with violence contrary to Section 296(2) of the Penal Code. The particulars were that on the night of 24th February, 2008 at Kwa Temba Area, Misikhu Location Bungoma while armed with dangerous weapons namely; a knife and a toy gun they robbed Bernard Waweru of a Motor Cycle Registration Number KAZ 612Y valued at Kshs 130,000/= and at or immediately before or after the time of such robbery used actual violence against the said Bernard Waweru.

The petitioner was tried at the Senior Resident Magistrates Court at Webuye and by a judgement delivered on 17/6/2009, they were convicted and sentenced to suffer death. Dissatisfied, they appealed to the High Court in Bungoma. By judgement delivered by that court on 29/6/2010, their appeal was dismissed.

The petitioner and the co-accused preferred another appeal to the Court of Appeal sitting in Eldoret. By a judgement delivered on 10/12/2015, their appeal was again dismissed.

The petitioner has now approached this court by way of petition filed on 10th April 2019 raising the following grounds;

1. That he was charged with the offence of robbery with violence contrary to Section 296(2) of the Penal Code.
2. That he appealed to the High Court at Bungoma which appeal was also dismissed.
3. That the death sentence was later commuted to life imprisonment by H.E the president in the year 2009.
4. That based on the Supreme Court Ruling made on 14/12/2017, the death sentence handed on him is unconstitutional, inhumane and degrading.

In his submissions, the petitioner urges this court to consider the mitigation that he is a first time offender and that he is remorseful. That he has been good in custody behavior and jail work alternative programmes. He has taken full advantage of the rehabilitation programmes offered and gained abilities which enable him to adopt a positive behaviour and attitude to deal with demands and challenges of every-day life.

That since his incarceration he has attained certificates in Polisher grade III, carpentry and joinery Grade III Trade Test.

In urging his re-sentence petition, he has relied on the provisions of Article 27(1)(2) of the Constitution and Section 333(2) of the Criminal Procedure Code. He urges this court to consider the 18 months period he has been in custody prior to sentencing and the 14 years post sentencing.

The respondent never filed any response or submissions.

The petition is grounded on the decision in *Francis Karioko Muruatetu & another Vs Republic [2017] eKLR* which declared the death sentence unconstitutional. Other courts have previously held that decision on mandatory nature of death sentence apply to mandatory

sentences in all other category of cases other than murder cases.

However, the Supreme Court on 6th July, 2021 clarified on the applicability of the *Muruatetu decision (supra)* in other classes of offences. The Court held;

The decision of Muruatetu and these guidelines apply only in respect to sentences of murder under Sections 203 and 204 of the Penal Code;

The record herein shows that the death sentence was imposed on the petitioner because that is the sentence permitted by law.

In the circumstances, the court finds that the petition lacks in merit and is hereby dismissed. Orders accordingly.

DATED AT BUNGOMA THIS 9TH DAY OF NOVEMBER, 2021

S. N. RIECHI

JUDGE