



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**CONSTITUTION AND JUDICIAL REVIEW DIVISION**

**PETITION NO. 177 OF 2018**

**HAMISI MWINYI MWAZUMBA.....PETITIONER**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT**

**JUDGMENT**

1. The Petitioner was charged and convicted for offence of murder in Mombasa Criminal Case No. 7 of 2002. He was sentenced to death and he has exhausted his appellate processes.
2. The Petitioner is now in this court pursuant to the decision of the Supreme Court in **Francis Karioko Muruatetu & Another vs. Republic [2017]eKLR** which found the mandatory nature of the death sentence to be unconstitutional.
3. The Petitioner killed his own mother using a knife. He was also armed with a rungu and arrows. He also attacked other members of the family.
4. The Petitioner in his submissions and mitigation stated that he has been in jail for 18 years and that he committed the offence under the influence of drugs. He prayed that he be jailed for the 18 years that he has served in jail.
5. Mr. Fedha, learned counsel for the prosecution submitted that the Petitioner has not reformed, and should be jailed for 40 years.
6. I have considered the submissions. The Petitioner has not offered any mitigating circumstances except that he was drunk at the time of committing the offence. The offence he committed was a serious offence against his own mother. There is no evidence that he has reconciled with other members of the family. Be that as it may, the submission by the prosecution that the Petitioner be jailed for 40 years is not very persuasive.
7. After considering the circumstances of this case I jail the Petitioner for Thirty (30) years.
8. Accordingly, I hereby set aside the death sentence meted on the Petitioner and in place thereof I sentence the Petitioner to serve a term of 30 years in jail from the date of arrest.
9. Right of appeal in 14 days.

That is the judgment of this Court.

**Dated, Signed and Delivered at Mombasa this 20<sup>th</sup> day of January, 2020.**

**E. K. OGOLA**

**JUDGE**

In the presence of:

Mr. Fedha for DPP

Petitioner in person

Mr. Kaunda Court Assistant