



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**CONSTITUTIONAL PETITION NO. 35 OF 2019**

**MICHAEL ODUOR ORONDE.....PETITIONER**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**(Petition for resentencing following mandatory death sentence imposed in Siaya PM Cr Case No 69 of 2008; affirmed by the High Court at Kisumu in HCRA NO. 177 of 2010 and the Court of Appeal at Kisumu in CA CRA 187 of 2012)**

**JUDGMENT**

1. The petitioner **MICHAEL ODUOR ORONDE** by this petition dated 22<sup>nd</sup> July 2019 seeks for resentencing following his conviction and sentence of death imposed on him for the offence of Robbery with violence contrary to section 296(2) of the Penal Code vide **Siaya PM Cr Case No 69 of 2008; affirmed by the High Court at Kisumu in HCRA NO. 177 of 2010 and the Court of Appeal at Kisumu in CA CRA 187 of 2012 which appeals were all dismissed.**
2. He seeks to benefit from the decision in **Francis Muruatetu v Republic SC PETITION NO. 15/2015** decision that declared the mandatoriness of death sentence unconstitutional for depriving the convict an opportunity to mitigate and for depriving the trial court of the judicial discretion in sentencing.
3. I have considered the petition herein and the mitigations by the petitioner and his submissions. The petitioner has been in prison from 2008 and despite maintaining his innocence, he now readily admits having committed the offence. He seeks for leniency of this court. The items of the robbery were among others, blankets. He has been behind bars for close to 12 years and he says that he has not benefitted from the crime. He regrets the offence. He has trained in carpentry and biblical studies. He promises not to reoffend.
4. The Prosecution agrees that the petitioner has demonstrated remorse and that he can be a good ambassador to others out there.
5. Having considered the petition, mitigation and submissions by the prosecution, and circumstances under which the offence was committed, iam satisfied that the petitioner is remorseful and that he is reformed. He has learnt life's skills in prison which can help him live a meaningful life in the society as he has learnt that crime does not pay.
6. In the premises, I hereby allow the petition for resentencing. I set aside the mandatory death sentence imposed on him and substitute it with a prison term of twenty (20) years to be calculated from 21/8/2008
7. Orders accordingly.

**Dated, Signed and Delivered at Siaya this 21<sup>st</sup> Day of January, 2020**

**R. E. ABURILI**

**JUDGE**

**In the presence of:**

The Petitioner in person

Mr. Okachi SPPC for Respondent

CA: Brenda and Modestar