



**THE REPUBLIC OF KENYA**

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

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO. 73 OF 2018**

**MBUU SAID.....PETITIONER**

**VERSUS**

**THE DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT**

**JUDGMENT**

1. The Petitioner was charged and convicted for the offence of murder in Mombasa Criminal Case No. 10 of 2010. He was sentenced to 35 years in prison, but when he appealed the Court of Appeal enhanced the sentence to death.
2. The Petitioner is now in this court pursuant to the Supreme court decision in **Francis Karioko Muruatetu & Another vs. Republic [2017] eKLR** in which the apex court found the mandatory nature of the death sentence to be unconstitutional.
3. The Petitioner in mitigation submitted he is a reformed person and that he is remorseful of what he did. He submitted that he be jailed for a period of 15 years including the time he has spent in jail.
4. Mr. Fedha, learned counsel for the prosecution submitted that the Petitioner killed his father in law when his father in law invited him for a discussion of differences between the Petitioner and his wife. When his father in law asked the Petitioner to pay dowry the Petitioner attacked him with a panga and he bled to death. After that the Petitioner boasted to his friends that he had killed the old man. The prosecution submitted that the Petitioner be jailed for 40 years.
5. I have considered those submissions. I note that there is no evidence of remorsefulness by the Petitioner. He committed a heinous act and still does not care. He deserved the severest of sentence. The trial court had jailed him to 35 years which was enhanced to death sentence by the Court of Appeal.
6. In setting aside the death sentence pursuant to the aforesaid Supreme Court decision in Muruatetu, I am not bound by the 35 years given by the trial court. In the circumstances of this case I hereby jail the Petitioner to a term of forty (40) years from the date of arrest.

Right of appeal in 14 days.

**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