

THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 62 OF 2017

NGOLO KONZI MGUTE.....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. 7 of 2012 and sentenced to death. He has lost all his appellate processes and 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.

2. The Petitioner was found guilty for the murder of Charo Mgute Lugo at Tsunguni village, Jibana Location in Kaloleni District within Kilifi County on 11/2/2012. He used a panga and a metal rod to kill his victim. He was in company of another person.

3. On mitigation for sentencing the Petitioner said nothing, except that the submissions by the prosecution that the Petitioner be jailed for 45 years was too much. The Petitioner did not show any remorsefulness. He has been in jail for seven years.

4. Mr. Fedha, learned counsel for the State urged the court to meet out a stiff sentence of 45 years from the date of arrest.

5. The offence for which the Petitioner was committed and sentenced to death is a serious offence which deserves to be adequately punished. Any person who takes away the life of another must take the consequences of such action. I hereby set aside the death sentence given to the Petitioner and in place thereof I jail the Petitioner for thirty five (35) years from the date of arrest.

Right of appeal in 14 days.

Dated, Signed and Delivered at Mombasa this 21st day of January, 2020

E. K. O. OGOLA

JUDGE

In the presence of:

Mr. Fedha for DPP

Petitioner in person

Mr. Kaunda Court Assistant