

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CONSTITUTIONAL PETITION NO. 58 OF 2018

PAUL NDETA MUYEKHO1ST PETITIONER

LEONARD MUYEKHO.....2ND PETITIONER

PETER MUYEKHO.....3RD PETITIONER

VERSUS

REPUBLICRESPONDENT

RULING

1. The petitioners herein were convicted in Butali PMCCRC No. of 123 of 2008, of robbery with violence, contrary to section 296(2) of the Penal Code, Cap 63, Laws of Kenya, and sentenced to death. The petitioners filed appeals at the High Court, Kakamega HCCRA Nos. 76, 78 and 79 of 2010, where the convictions were affirmed and the sentences upheld. They moved to the Court of Appeal, in Kisumu CACRA No. 60 of 2014. The Court of Appeal, in a decision rendered on 10th December 2014, dismissed their appeal.

2. They initiated the instant petition on 16th May 2018, seeking re-sentencing. On 13th December 2018 they filed a Motion seeking similar orders principally on the grounds that the decision of the Supreme Court in *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR has given a window for a review of their sentences, given that they have exhausted their rights of appeal.

3. There are recent developments in the Kenyan jurisprudence with respect to mandatory sentences. The Court of Appeal and the Supreme Court have led the way in this regard. See *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR and *Dismas Wafula Kilwake vs. R.* [2018] eKLR.

4. Upon conviction, none of the petitioners expressed remorse. The petitioners and their accomplices were armed with pangas, which they used to cut their victims with. They were convicted on 31st March 2010.

5. I directed on 12th November 2019 that the probation office do evaluate the case and file pre-sentence reports. That has been done and reports were filed on 17th December 2019. The reports are favourable and recommend reduction of sentence for all three petitioners.

6. The petitioners committed aggravated robbery. They not only robbed the victims of their property, they visited terror on them in the process. The law seeks to safeguard life, limb and property, and looks unfavourably at any person who acts in general disregard of the right to life or to the integrity of the person of another or their property. People must be ready to earn their keep honestly through hard work and sweat, and not by stealing from others, and more so where they use violence to achieve that end. It is something that ought not be countenanced or tolerated, even as the courts seeks to balance the need to maintain law and order with the need to respect the rights and humanity of the offenders. However, since the superior courts have declared mandatory sentences unconstitutional, and paved the way for the revisiting of such sentences, I shall bear what I have stated above in mind in reviewing the death sentences imposed in this case.

7. In the spirit of *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR, I shall quash the sentence of death that was imposed on the petitioners by the trial court, and confirmed by the two appellate courts. I shall substitute that sentence with one of twenty (20) years imprisonment, to run from the date of conviction on 31st March 2010. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 17th DAY OF January, 2020

W MUSYOKA

JUDGE