

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL MISC. APPLICATION NO. 58 OF 2019

MOHAMED ADAN HUSSEIN.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant was convicted and sentenced to death by the Lower Court for the offence of robbery with violence contrary to section 296(2) of the Penal Code Cap 63 Laws of Kenya.
2. Particulars being that on 14/9/2013 in Mandera township, Mandera East District of Mandera County jointly with others not before court, being armed with dangerous weapon namely Somali sword robbed Abdiaziz Mohamed Aden of his mobile phone make Nokia 1280 valued at Kshs.2,000/= and immediately at the said robbery stabbed said victim.
3. After conviction and sentence the applicant lodged High Court Criminal Appeal No. 3 of 2014 before High Court at Garissa. After same was heard the appeal was dismissed on 18/9/2014.
4. He lodged a notice of appeal with intention to appeal to Court of Appeal but by letter of 6/11/2018 received on 15/11/2019 he withdrew the notice thus no appeal pending.
5. He now seeks the resentencing courtesy of the Supreme Court case of **Muruatetu Petition No. 15 and 16 of 2015** delivered on 14/12/2017 which held that mandatory death sentence is unconstitutional.
6. The prosecution does not oppose the application thus the court makes the following orders:

(i) The death sentence awarded to the applicant in Mandera SPMCRC No. 284 of 2013 on 13/11/2013 is set aside.

(ii) The matter is referred back to the trial court in Mandera for sentencing after considering mitigations.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 19TH DAY OF FEBRUARY, 2020.

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C. KARIUKI

JUDGE