

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL MISC. APPLICATION NO. 18 OF 2019

ONESMUS KALI MULANDI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant Onesmus Kali Mulandi was convicted and sentenced for life for offence of robbery with violence contrary to section 296(2) Penal Code.
2. Particulars being that on 20/9/2010 at Kanzaaka village in Kyuso District within Kitui County while armed with dangerous weapon namely a panga robbed Wilson Mbevo Muthangya of a bicycle and a mobile phone all valued at Kshs.7,500/= and immediately after the said robbery killed the said victim.
3. The applicant lodged appeal No. 1 of 2013 High Court at Garissa which after it was heard by Mutuku and Korir J.J. upheld the conviction and substituted life sentence with death sentence.
4. The applicant now moves to this court in what he calls an application for resentencing pursuant to Supreme Court case of **Francis Karioko Muruatetu & Anor vs Republic** delivered on 14/12/2017 whereby the court held:

“Para (112) The mandatory nature of death sentence..... is hereby declared unconstitutional. For avoidance of doubt, this does not disturb the validity of death sentence as contemplated under Article 26(3) of the Constitution.”

5. The 2 judges did substitute the life sentence with death sentence but not as mandatory death sentence neither did they say so. They looked at the circumstances of the case and especially that the applicant and another occasioned and caused death when they were executing robbery.
6. Thus I find this is not appropriate case for interfering with sentence made by my 2 colleagues in the High Court.
7. For avoidance of doubt this court is mandated to interfere with sentence of High Court which is unconstitutional under **Muruatetu case** and subsequent Court of Appeal decisions if the same is made before 14/12/2017 and where there is no pending appeal in Court of Appeal.
8. Thus **the court dismisses the instant application for want of merit.**

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

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C. KARIUKI

JUDGE