



**REPUBLIC OF KENYA**

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

**PETITION NO. 203 OF 2018**

**JULIUS BARIU MUNORU.....APPLICANT**

**-versus-**

**REPUBLIC ..... RESPONDENT**

**RULING**

[1] The petitioner, **Julius Bariu Munoru**, was charged before the Chief Magistrate's Court Criminal Case No. 655 of 2000 at Maua with the offence of robbery with violence contrary to **Section 296 (2) of the Penal Code**.

[2] After the trial, the applicant was found guilty and sentenced to death. Being aggrieved by that decision, the petitioner appealed to the High Court at Meru, HCCRA No. 52 of 2003, where his conviction and sentence were upheld. His appeal to the Court of Appeal at Nyeri, Criminal Appeal No. 555 of 2010, was dismissed.

[3] Vide his Motion the petitioner petitioned this court for revision of his sentence on the basis of the Supreme Court decision in the case of **Francis Muruatetu and Others vs Republic [2017] eKLR**.

[4] In that case, the Supreme Court of Kenya held that the mandatory nature of the death sentence under **Section 204 of the Penal Code** was unconstitutional in so far as it denied the Court of discretion in sentencing. The Court proceeded to set out the criteria or the principles that should guide a Court in sentencing. Some of the considerations are *age of the offender, being a first offender, whether the offender pleaded guilty, the character and record of the offender, commission of the offence in response to gender-based violence, remorsefulness of the offender, the possibility of reform and social re-adaptation of the offender and any other factor that the Court considers relevant*.

[5] The Supreme Court was dealing with the offence of murder and attempted to restrict its decision to section 204 of the Penal Code. But, I take the view that the principle established in the case is that a provision of the law that takes away or restricts the discretion of the court to mete out appropriate sentence is an affront to fair trial; a right guaranteed and protected by the Constitution. When I look into every judicial, legal or literary wells, I find nothing that suggests to me that this principle is peculiar to section 204 of the Penal Code. And, on the basis of judicial precedent, the principle should apply- and in my view applies- to all cases where the law provides for sentence that takes away or restricts judicial discretion in sentencing. For instance, mandatory death sentence in cases of robbery with violence etc. Be that as it may, I am not alone in this thinking; eminent judges of appeal in the case of **Godfrey Ngotho Mutiso v R [2010] eKLR (Criminal Appeal 17 of 2008)**, although they attempted to restrict their decision to section 204 of the Penal Code, heard the echoes of great wit and wisdom and stated the following:

**“We have confined this judgment to sentences in respect of murder cases, because that was what was before us and what the Attorney General conceded to. But we doubt if different arguments could be raised in respect of other capital offences such as treason under section 40 (3), robbery with violence under section 296 (2) and attempted robbery with violence under section 297 (2) of the Penal Code. Without making conclusive determination on those other sections, the arguments we have set out in respect of section 203 as read with section 204 of the Penal Code might well apply to them.” [Underlining mine]**

[6] See also the Court of Appeal decision in **William Okungu Kittiny vs. Republic [2018] eKLR**.

[7] I will so proceed. The particulars of the offence are that the appellant was in the company of another while armed with dangerous weapons namely  *pangas* and iron bars when they robbed John Mutua M'Ekotha of cash valued at Kshs. 50,000/- and used actual violence on the said victim.

[8] According to the prisons' report, the petitioner regrets his actions, participated in rehabilitation programs, has an outstanding character for the about eighteen (18) years he has been in custody and his relatives have been visiting him regularly. This transformation will allow him to integrate well into the society. According to the petitioner, he is a first offender and was aged 29 years old at the time of arrest but now aged 46 years old. He is remorseful for what he did and he prays for forgiveness.

[9] I have considered the foregoing and the circumstances under which the offence was committed. I have also considered the mitigation by the petitioner and the prisons' report. Accordingly, I form a considered opinion that the Petitioner deserves an appropriate sentence. I therefor set aside the death sentence. After taking into account all the circumstances of the case and in my judicial assessment I sentence the Petitioner to twenty (20) years imprisonment to be computed from 21<sup>st</sup> March 2002 when he was first arraigned in court. It is so ordered.

**Dated, signed and delivered in open court this 5<sup>th</sup> day of March 2020**

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**F. GIKONYO**

**JUDGE**

**In presence of**

**Petitioner in person – present**

**M/s Nandwa for respondent.**

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**F. GIKONYO**

**JUDGE**