



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**(CORAM: CHERERE-J)**

**PETITION NO. 01 OF 2020**

**BETWEEN**

**KENNEDY WESONGA KWOPA.....PETITIONER**

**AND**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

**Introduction**

1. On 27<sup>th</sup> June, 2003, the trial court in **BUSIA CRIMINAL CASE NO.1061 OF 2002**, convicted and sentenced the Petitioner to death for robbery with violence contrary to section 296(2) of the Penal Code. Petitioner lodged an appeal **BUNGOMA HIGH COURT CRIMINAL APPEAL NO. 151 OF 2003** which was dismissed on 30<sup>th</sup> July, 2009 whereupon the conviction and sentence was upheld. The Petitioner subsequently appealed to the Court of Appeal in **KISUMU CRIMINAL APPEAL NO. 276 OF 2009** which similarly upheld his conviction and sentence by a judgment dated 30<sup>th</sup> October, 2014.

2. By a petition filed on 13<sup>th</sup> January, 2020, the Petitioner has petitioned this court for resentencing.

3. Ms. Gathu, learned counsel for the state submitted that the petition was not opposed and proposed that the Petitioner be sentenced to an imprisonment term of 20 years from date of conviction for the reason that the complainant was robbed but was not injured.

**Analysis and Determination**

4. At the time of the petitioner's conviction, death was the only available sentence for robbery with violence and imprisonment for a term of not less than fifteen years but which may be enhanced to imprisonment for life for the offence of rape.

5. The Supreme Court's decision in **Francis Kariuki Muruatetu & Another v Republic & 5 others [2016] eKLR** declaring the mandatory death sentence unconstitutional has necessitated resentencing of all persons previously sentenced to the mandatory death sentence.

6. I have considered ***The Sentencing Policy Guidelines, 2016*** and its application which is intended to promote transparency, consistency and fairness in sentencing (See **Michael Kathewa Laichena & another v Republic [2018] eKLR**).

7. Under the proviso to **section 333(2)** of the ***Criminal Procedure Code (Chapter 75 of the Laws of Kenya)***, the court is entitled to take into account the period the petitioner has spent in custody in determining the sentence. The court record shows that the petitioner has served 13 years since the date of conviction.

8. The Petitioner has served 17 years. As a way of reformation, Petitioner has undertaken upholstering and has attained a GRADE I certificate. He has also obtained a certificate in Health Education. He has the potential for productive life outside prison. After considering all the mitigating and aggravating factors, and the fact that the Petitioner is a first offender, I re-sentence him to the period served.

**DELIVERED AND SIGNED IN KISUMU THIS 05<sup>th</sup> DAY OF March 2020**

**T. W. CHERERE**

**JUDGE**

In the presence of-

**Court Assistant - Amondi/Okodoi**

**Petitioner - Present in person**

**For the State - Ms. Gathu**