



**THE REPUBLIC OF KENYA**

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

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO. 118 OF 2018**

**ALEX JUMA *alias* JIMMY KAZUNGU.....PETITIONER**

**VERSUS**

**THE DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT**

**JUDGMENT**

1. The Petitioner herein Alex Juma Alias Jimmy Kazungu was convicted for offence of robbery with violence and being in possession of a firearm. He was sentenced to death. He is now here for resentencing. The Petitioner together with others was armed with a pistol and robbed two complainants of Kshs. 300,000/= and threatened to shoot the victim. The second victim was robbed of Kshs. 17,802/= and a wrist watch and was also threatened by the Petitioner. On being in possession of firearm he was sentenced to four (4) years.

2. The Petitioner has exhausted his appellate rights and is now before this court pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Another vs. Republic [2017] eKLR** in which the apex court found that the mandatory nature of the death sentence is unconstitutional.

3. Ms. Ogega, learned Counsel for the State submitted that the Petitioner committed robbery with violence while armed with dangerous weapons including a firearm, and should be sentenced to a total of 25 years in prison.

4. The Petitioner on his part submitted that he regretted the crime and that he is now reformed and that at 62 years he is old and has no strength for mischief.

5. On 29/8/2019 a Social Inquiry Report was filed in this court on the Petitioner. The Report gives background of the Petitioner's family. His wife is sick with tuberculosis. They have five surviving children. His father is deceased while his mother is old and needs care. The Report notes that the home environment is favourable for re-integration of the Petitioner.

6. The Petitioner has served a jail term of 22 years. In my view, the Petitioner has paid for the crimes he committed and should be released to spend the rest of his life at home.

7. In the upshot I make Judgement as hereunder:

(i) I hereby set aside the death sentence imposed upon the Petitioner by the trial court.

(ii) Instead thereof the Petitioner is jailed for the time already served of 22 years with the result that the Petitioner is hereby set free and released from prison unless otherwise lawfully held.

8. Right of appeal in 14 days.

**Dated, Signed and Delivered at Mombasa this 9<sup>th</sup> day of April, 2020.**

**E. K. O. OGOLA**

**JUDGE**

In the presence of:

Ms. Mwangeka for DPP

Petitioner in person via video link

Mr. Kaunda Court Assistant