



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**PETITION NO. 91 OF 2018**

**ALLAN OCHIENG OKEYO.....PETITIONER**

**AND**

**DIRECTOR OF PUBLIC PROSECUTION....ESPONDENT**

**JUDGMENT**

1. The Petitioner was convicted for the offence of Robbery with Violence contrary to Section 295 as read with 296(2) of the Penal Code and sentenced to death in Mombasa Cr. Case No. 2883 of 2006. He appealed in HCCRA No. 143 of 2007 and Criminal Appeal. No. 218 of 2010. Both appeals were dismissed and sentence upheld.

2. The Petitioner has now petitioned this court for review of sentence in view of the Supreme Court declaration in *Francis Kariokor Muruatetu & Another vs. Republic SCK Pet. No. 15 of 2015 (2017) eKLR* in which the apex court found and held that the mandatory nature of the death sentence is unconstitutional.

**Brief Circumstance of the offence**

3. The particulars are that on 8<sup>th</sup> August 2006 along Mvita Road in Mombasa District Coast Province jointly with others and while armed with dangerous weapons namely toy pistols and knives robbed PHILIP MWENDWA MUTISYA of Kshs. 76,000 and immediately before or after the time of such robbery used personal violence on the victim.

4. The Petitioner submitted that the death sentence which was commuted to life imprisonment is unconstitutional. He has now exhausted his right of appeal and approaches this Court to declare the death sentence unconstitutional and contrary to Article 50(1) and Article 25(a) of the constitution, and to impose an appropriate sentence upon him.

5. He further submitted that the court did not consider his mitigation as he is a first offender and has never been accused of breaking the law and at the same time he is very remorseful as he has already paid his debt to the society and learnt his lesson. The Petitioner apologized for the offence he committed and prayed to be released so that he can apply the skills learnt in custody to the community outside prison.

6. I have considered the Petition as well submissions of the parties. On the issue of re-sentencing the Petitioner submitted that he has reformed and this is supported by the Prisoner's Progress Report. This Court notes that the Petitioner and his accomplices actually were armed with a knife at the time of the offence. Sentencing must consider how the crime was committed, and also the rights of the victims. The Petitioner has spent 13 years in custody since the time of his arrest.

7. In consideration of these premises, I hereby set aside the death sentence mete on the Petitioner and instead thereof I herewith impose a 16 years jail term upon the Petitioner from the time of the arrest.

That is the Judgment of the court.

Right of appeal in 14 days.

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

**E. K. O. OGOLA**

**JUDGE**

In the presence of:

Petitioner in Person via video link

Ms. Mwangeka for DPP

Mr. Kaunda Court Assistant