



**REPUBLIC OF KENYA**

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

**CRIMINAL MISC. APPLICATION NO. 79 OF 2019**

**DAKANE MOHAMED MUGHOW.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The applicant was convicted and sentenced to death on offence of attempted robbery contrary to section 297(2) of the Penal Code in Criminal Case No. 251 of 2012 at Hola.
2. He appealed in High Court Criminal Appeal No. 54 of 2013 at Garissa. The same appeal was heard and dismissed. He did not appeal any further.
3. The trial court on 14/4/2013 after hearing mitigations said court had no discretion as the only penalty for the offence charged was death.
4. Under **Muruatetu case** and subsequent superior courts decisions have held that mandatory nature or aspect of a death sentence is unconstitutional.
5. Thus the applicant has invoked the above principle of law and thus seeks resentencing. The prosecution does not oppose the application. Thus the court makes the following orders:

*i. The death sentence in Criminal Case No. 251 of 2012 in Senior Principal Magistrate's Court at Hola is set aside.*

*ii. The matter is referred to Hola for sentencing.*

**DATED, DELIVERED AND SIGNED AT GARISSA THIS 2<sup>ND</sup> DAY OF APRIL, 2020.**

.....

**C. KARIUKI**

**JUDGE**