



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**PETITION NO. 70 OF 2019**

**GEOFFREY OMONDI ODERO.....PETITIONER**

**AND**

**DIRECTOR OF PUBLIC PROSECUTION....RESPONDENT**

**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 Kisumu Cr. Case No. 828 of 2006. He appealed and 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 the Petitioner together with 3 others robbed one Mordecai Owuor of motor vehicle registration number KAH 223 H Nissan Double Cabin and during the Robbery fatally murdered 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 said 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 was misled by peers. The Petitioner apologized for the offence he committed and stated that he has reformed, that he is sickly and wishes to be released so as to get medical attention and prayed to be jailed the 14 years already served.

6. On his part Mr. Fedha, Learned Counsel for the Prosecution submitted that as a result of the Petitioner's actions a life was lost and that the Petitioner be sentenced to 40 years in total and that the Petitioner has already spent 14 years in custody.

7. 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 that he should be released. This Court notes that the Petitioner and his accomplices at the time of crime killed an innocent person whom they used to work for and so sentencing must consider the rights of the victim. Although the Petitioner states that he was only 20 years old at the time of the offence and that he was misled by two older accomplices, murder is a serious offence. This Court must send out a clear message that those who commit proven offences must be fully punished for the same. In the premises, I make the following Judgment

:-

i) I hereby set aside the death sentence mete upon the Petitioner by the trial Court.

ii) Instead thereof I hereby sentence the Petitioner to a jail term of twenty seven (27) years from the date of 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