



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

PETITION NO. 21 OF 2018

KATANA CHARO TSURIPETITIONER

VERSUS

REPUBLIC..... RESPONDENT

CORAM: Hon. Justice R. Nyakundi

Ms. Sombo for the State

The petitioner in person

JUDGMENT

The petition is preferred on the following grounds:

1. That this Hon. Court must take cognizance of recent developments in law in this area and I apply it to the present case particularly because the same is advantageous to me the petitioner in its recent decision in FRANCIS KARIOKO MURUATETU AND ANOTHER V REP 2017 KLR the Supreme Court of Kenya, pronounced that the mandatory aspect of the death sentence was unconstitutional.
2. That the court therefore affectively removed the fetters placed on the courts discretion when passing sentence in cases which hitherto carried the death penalty as the only lawful sentence upon conviction.
3. That the decision by the supreme court allows the high court to interfere with the sentence upheld by the court of appeal in the interest of justice.
4. That the petitioner had fully mitigated before the trial court relying on that mitigation address and therefore humbly beg this hon. court to impose a sentence which is appropriate to the offence committed by me the petitioner and the circumstances surrounding the same.
5. That the petitioner was a first offender, with a young family I was taking care of I have reformed and the items robbed from the complainant were of modest value.
6. That I the petitioner has already been incarcerated for slightly over 23 years since I was arrested. I have already paid my debt to society and learned my lesson and I will never repeat again.
7. That throwing me the petitioner into prison cell for the rest of entire natural life as if I was a thing instead of a person without any continuing duty to respect my dignity which include the right to live in despair and helplessness and without hope of release would surely infringe my constitutional right to human dignity as provided under Article 28 of the constitution of Kenya 2010.
8. That the cost be provided for in favour of me the petitioner in any event has provided for in article 22 (1) (3) (c) of the constitution.
9. That I the petitioner therefore humbly prey that this hon. court to declare that the death sentence upheld upon me the petitioner by the Court of Appeal was unconstitutional in the circumstances of this case and the appropriate sentence that

commends itself is one that already served since the time of arrest or any other orders this hon. court shall deem just fit and I so pray.

I affirm the principles in **Muruatetu case {2017} eKLR** which interalia provides for individualized sentences taking into account, the age, personal circumstances, gravity of the offence, aggravating factors, mitigation factors and any extenuating circumstances.

What **Muruatetu** observed was the mandatoriness of the death sentence sentence.

The petitioner in this case was convicted and sentenced pursuant to Section 296 (2) of the penal code. On the submissions at this sentencing re-hearing I order as follows:

(1). Conviction be affirmed.

(2). The sentence imposed of death be varied and substituted with the period of 24 years already served. The petitioner is set free unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 14TH DAY OF APRIL, 2020

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R. NYAKUNDI

JUDGE