

THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 153 OF 2018

MBOVU NYAMAWI MGANDI..... PETITIONER

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS....RESPONDENT

JUDGMENT

1. The Petitioner Mbovu Nyamawi Mgandi was charged and convicted for the offence of robbery with violence contrary to Section 296 (2) of the Penal Code. He was sentenced to death.
2. The particulars of the charge were that on the 29/10/2010 at Shimanya village in Kwale County within Coast Region, jointly with others not in court, robbed Nicodemus Kalugo Jonathan a motor bike make Sanlg valued at Kshs. 54,165/= and at or immediately before or immediately after the time of such robbery threatened to use actual violence against the said Nicodemus Kalugo Jonathan.
3. The Petitioner lost his appeal to the High Court 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 the mandatory nature of the death sentence to be unconstitutional.
4. Ms. Mutua, learned Counsel for the State submitted that this court can review the sentence herein and substitute the death sentence with a term in prison. Counsel submitted that the offence committed was so grave and that it should be punished by 15 years in jail.
5. On his part the Petitioner agreed with the submission by the State that 15 years would be adequate.
6. The Petitioner has now served 9 years in jail. This court finds that the Petitioner is remorseful and has learnt his mistake. I hereby now set aside the death sentence imposed upon the Petitioner by the trial court. In place thereof I jail the Petitioner to serve 13 years in prison from the date of arrest.
7. Right of appeal in 14 days.

Dated, Signed and Delivered at Mombasa this 9th 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