



**REPUBLIC OF KENYA**

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

**MISC. CRIMINAL APPLICATION NO. 37 OF 2018**

**MOHAMED NOOR HUSSEIN.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Applicant was charged with offence of robbery with violence contrary to Section 296 (2) of the Penal Code Cap 63 Laws of Kenya. Whereof he was convicted and sentenced to death in Garissa SPMCRC No. 804/03.
2. He lodged HCCRA No. 62/04 Meru where the appeal was summarily rejected. He never appealed any further.
3. He has now moved this court by virtue of Supreme Court Case No. **15 & 16 of 2015- Francis K. Muruatetu eKLR 2017** and the subsequent Superior Court decision which have held that mandatory nature of death sentence is unconstitutional.
4. The prosecution has not opposed the application.
5. Thus, the court makes the following orders;

**(i) The death sentence in Criminal Case No. 804/03 is set aside.**

**(ii) The matter is referred to the Chief Magistrate Garissa for sentencing.**

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

.....

**C. KARIUKI**

**JUDGE**