



**REPUBLIC OF KENYA**

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

**PETITION NO. 98 OF 2019**

**RAYMOND HERMES ODHIAMBO.....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 Mombasa Cr. Case No. 3313 of 1997. He appealed in HCCRA No. 234 of 1998 and Criminal Appeal. No. 77 of 2001. 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 the mandatory nature of the death sentence to be unconstitutional.

**Brief Circumstance of the offence**

3. The particulars are that on 4<sup>th</sup> November, 1997 at about 4.00 a.m at Magongo Mainland along Old Mombasa Nairobi Main Road the Petitioner while armed with a knife, together with another stole a motor vehicle registration KAE 842 X from Naftali Kamau and his conductor Rinus Kamau.

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 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. The Petitioner apologized for the offence he committed and that he has reformed having learnt a lot in custody. He prayed to be released so that he can apply the skills learnt in custody to the community outside prison.

6. The prosecution submitted that the Petitioner while committing the offence, injured a person and that he has been in custody for 22 years and prayed that he be jailed for the time served.

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. The Petitioner appears remorseful. His Prison Progress Report speaks well of him. He is now an elder in prison and is in charge of the Spraying Department. He has already spent 22 Years in Prison. In the premises, I now make judgment as under:-

- i) I set aside the death sentence meted on the Petitioner by the trial Court.
- ii) The Petitioner is jailed to the term already served of 22 Years.
- iii) The Petitioner is forthwith set free and released from prison unless lawfully held.

That is the Judgment of the court.

**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