



**REPUBLIC OF KENYA**

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

**PETITIONS NOS. 18 AND 35 OF 2018, AND 24 OF 2019**

**MATHEWS KHAYADI YAPESA.....1<sup>ST</sup> PETITIONER**

**MAURICE ODONGO.....2<sup>ND</sup> PETITIONER**

**TITUS AMALEMBA.....3<sup>RD</sup> PETITIONER**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The petitioners herein were convicted in Kakamega HCCRC No. 10 of 2009, of murder, contrary to section 203, as read with section 204 of the Penal Code, Cap 63, Laws of Kenya, and sentenced to twenty years' imprisonment each. The petitioners filed an appeal at the Court of Appeal, Kisumu CACRA No. 40 of 2013, where their conviction was affirmed and the sentence substituted with the death penalty.

2. There are recent developments in the Kenyan jurisprudence with respect to mandatory sentences. The Court of Appeal and the Supreme Court has led the way. It is from that background that the petitioners moved this court in the instant cause, through their three separate petitions, which I am hereby disposing of simultaneously. They principally seek re-sentencing in view of the developments that I have referred to here above.

3. I note that upon conviction, the petitioners did not express leniency. I have noted too the circumstances of the commission of the offence. The deceased person was attacked at his home, in broad daylight, and beaten with *pangas*, axes and hoe sticks. The attack was vicious, and it appears that the attack was not immediately provoked by the deceased. It had all the hallmarks of a coldblooded murder.

4. I shall accordingly, following Francis *Karioko Muruatetu & another vs. Republic* [2017] eKLR, set aside the death penalty, and substitute it with a sentence of imprisonment for forty (40) years, effective from the date of their conviction on 31<sup>st</sup> January 2013. It is so ordered.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 7<sup>TH</sup> DAY OF MAY, 2020**

**W MUSYOKA**

**JUDGE**