

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

PETITION NO. 33A OF 2019

1. ERICK ACHIKI ORERI.....1ST PETITIONER

2. EVANS NYACHIRO MARONGA.....2ND PETITIONER

-VRS-

THE REPUBLIC.....RESPONDENT

JUDGEMENT

The 1st petitioner in this case has approached this court for a sentence re-hearing in line with the decision of the Supreme Court in **Francis Karioko Muruaretu & another v Republic [2017] eKLR**. He alleges to have been sentenced to death for the offence of robbery with violence contrary to Section 296 (2) of the Penal Code. It is also his allegation that he appealed to the High Court which dismissed his appeal and affirmed the conviction and sentence.

During the hearing of this petition he alleged to have appealed to the Court of Appeal but the appeal is yet to be determined. His co-petitioner withdrew his petition to await the determination of the appeal.

Counsel for the respondent noting that the 1st petitioner was handed a mandatory sentence does not oppose the application for re-sentencing. However, while I am alive to the power of this court to re-sentence the 1st petitioner based on the nature and circumstances of the offence and the mitigation he has offered, I note that he has not provided me with material to do so. He has not supplied this court with any records and there is very little that this court can do in the absence of court records. Moreover, his appeal which I believe challenges his conviction and sentence by the trial court is awaiting determination by the Court of Appeal and it would do well to await that decision. Accordingly, the course that commends itself is to strike out this petition while holding that the petitioner shall be at liberty to re-apply when he receives his records and in the event that he does not, pursue his appeal at the Court of Appeal. It is so ordered.

Signed, dated and delivered in open court this 2nd day of July 2020

E. N. MAINA

JUDGE

Judgement delivered virtually via Microsoft Teams