

REPUBLIC OF KENYA

IN THE HIGH COURT

AT KISII

CONSTITUTIONAL PETITION NO. 10 OF 2018

BETWEEN

CYRUS NYAMACHE NYABUTI.....1ST PETITIONER

RICHARD ACHOKI.....2ND PETITIONER

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

1. The petitioners **Cyrus Nyamache Nyabuti and Richard Achoki** seeks resentencing. They were convicted of the offence of robbery with violence contrary to section 296 (2) of the Penal Code and were sentenced to death. They were sentenced in PMCC No.147 of 2018 at Nyamira. Their appeal in the High Court in HCCR NO.209 OF 2010 was dismissed.

2. The petitioners rely on the Supreme Court decision in Francis **Karioko Muratetu & Another vs. Republic SCK Petition No. 15 of 2015** declaring the mandatory death penalty unconstitutional. This Court of Appeal's decision in **William Okungu vs. Republic Criminal Appeal No. 56 of 2013** held as follows;

[9] From the foregoing, we hold that the findings and holding of the Supreme Court particularly in paragraph 69 applies mutatis mutandis to Section 296 (2) and 297 (2) of the Penal Code. Thus, the sentence of death under Section 296 (2) and 297 (2) of the Penal Code is a discretionary maximum punishment.

3. I have read the proceedings in the lower court and High Court, the circumstances of the case and also noted that the petitioner has been in custody since 14th October 2010, about 8 years. I sentence petitioners **Cyrus Nyamache Nyabuti and Richard Achoki** to a period of 15 years each one, from the 14th October 2010.

Dated signed and delivered at Kisii this 13th day of June 2019.

R.E.OUGO

JUDGE

In the presence of;

1st Petitioner Present in person

2nd Petitioner Present in person

Mr. Otieno Senior Prosecution Counsel Office of the DPP

Rael Court Clerk