



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
HCCRA NO. 130 OF 2010
AT KISII
FROM ORIGINAL CR. CASE OF 354 OF 2009 AT SRM'S MIGORI
CONSTITUTION PETITION NO. 54 OF 2018
JOHN KEPHA OTIENO
PATRICK AYUB ORINDA.....APPLICANTS
VERSUS
REPUBLIC.....RESPONDENT

JUDGMENT

1. The petitioners John **Kepha Otieno and Patrick Ayub Orinda** seeks resentencing. The petitioners were convicted of the offence of robbery with violence contrary to section 296 (2) of the Penal Code and were sentenced to death. Their appeal to the High Court, in HCCR No. 130 of 2010 was dismissed and their second appeal to the Court of Appeal too 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. The 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 and judgments of the lower court and the High Court. It is clear that during the robbery the applicants were armed, they injured the complainants, noting the circumstances of the case and also noted that the petitioners have been in custody since **25th June 2010**, about 9 years. I re-sentence **John Kepha Otieno** to a period of **twenty (20) years** from the **25th June 2010**. I also re-sentence **Patrick Ayub Orinda** to a period of **twenty (20) years** from the **25th June 2010**.

Dated signed and delivered at Kisii this 3rd day of July 2019.

R.E.OUGO

JUDGE

In the presence of;

John Kepha Otieno In person

Patrick Ayub Orinda In person

Mr. Otieno Senior Prosecution Counsel Office the DPP

Rael

Court clerk