

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAMIRA

CRIMINAL PETITION NO. 01 OF 2019

SAMSON NYANGOTO OSORO.....PETITIONER

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGEMENT

By the petition filed herein on 9th April 2019 the petitioner a convicted person, urged this court to grant him orders firstly in line with the decision in **Joseph Kaberia Kahinga & 11 Others Vs. Attorney General [2016] eKLR** and secondly to find the life sentence he is currently serving violates his rights and to resentence him in view of the decision of the Supreme Court in **Francis Karioko Muruatetu & Wilson Thirimbu Mwangi [2017] eKLR**. When the matter came for hearing before this court however, the petitioner abandoned the first prayer and urged this court to resentence him. Apparently he had upon exhausting all his appeals filed another petition in this court but the same was not heard.

From the scarce information placed before this court by the petitioner he was charged with robbery with violence contrary to Section 296 (2) of the Penal Code in Keroka SCRMCR Case No. 273 of 2006. He was sentenced to death but the sentence was commuted to life imprisonment vide a presidential decree. It is that sentence of life imprisonment that he wishes to be made determinate. He has however urged this court to consider the fourteen years already served and a period of six years he stayed in remand custody.

In the course of preparing this judgement I came across Nyamira Misc. Criminal Application No. 16 of 2017 filed by the applicant on 30th March 2017 under Article 50 (6) (a) and (b) of the Constitution. Although that petition was dismissed it contains copies of the proceedings and judgement of the lower court as well as a judgement of the High Court which have proved very helpful in the instant petition. The record of the lower court shows that the petitioner was heard in mitigation but because the only sentence was death and it was mandatory he was sentenced to death. The sentence was upheld by the High Court after finding that the appellants were properly sentenced. The mandatory nature of the death sentence in robbery with violence has since been declared unconstitutional by the Supreme Court in the case of **Francis Karioko Muruatetu & Wilson Thirimbu Mwangi (Supra)**. The courts now have discretion to sentence the accused persons depending on the circumstances of the case. The proceedings in Misc. Cr. No. 16 of 2017 indicate the date of sentencing as 12th July 2006. What I do not have is evidence of the six-year period the petitioner allegedly stayed in remand awaiting trial. The proceedings gravitate towards a period of six months rather than 6 years. This is because the plea was taken on 26th April 2006, the judgement delivered on 12th July 2006 and the sentence imposed on even date. Accordingly, taking everything into account this court shall sentence the petitioner to thirty (30) years imprisonment from the date he was convicted and sentenced by the lower court. It is so ordered.

Dated, signed and delivered in Nyamira this 2nd day of July 2019.

E. N. MAINA

JUDGE