



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. 49 OF 2018

ALI MLAKO MWERO.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT

1. The matter before the Court is a petition by the Petitioner for resentencing.
2. The Petitioner herein was charged with robbery with violence contrary to Section 296 (2), particulars being on 21st and 22nd April. 1999 at about 4.00 a.m. at Mwalughanje Gate – Kinango Location in Kwale District within Coast Province, jointly with others not before court being armed with dangerous weapons namely pangas robbed Mesalim Charo cash KShs. 20,450/=, one wrist watch, one radio make Sonny all valued at 25,450/= and at or immediately before or immediately after the time of such robbery, threatened to use actual violence to the said Mesalim Charo.
3. The charge was proved and the Petitioner was jailed to suffer death. The sentence was confirmed in appeal.
4. The Petitioner is now before this Court pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Another vs. Republic [2017] eKLR** in which the Court declared mandatory death sentence to be unconstitutional.
5. Mr. Fedha learned counsel for the Director of Public Prosecution has submitted that the Petitioner be sentenced to the 20 years he has already served in the prison.
6. I have considered the submissions. The Petitioner was involved in a heinous offence in which he threatened violence but we thank God he did not harm anybody.
7. The Petitioner has been in jail for 20 years. In my view, the Petitioner has learned from his mistake and has also suffered retribution, has been rehabilitated and I believe is also reformed.
8. The Petitioner is accordingly hereby sentenced to 20 years in jail, and having served the entire sentence the Petitioner is hereby forthwith set free and released from prison unless otherwise lawfully held.

That is the Judgment of the Court.

Dated, Signed and Delivered in Mombasa this 17th day of September, 2019.

E. K. OGOLA

JUDGE

In the presence of:

Mr. Fedha for DPP

Petitioner in person

Mr. Kaunda Court Assistant