



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 180 OF 2018

JOSEPH MUTINDA.....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 jointly charged with robbery with violence contrary to Section 296 (2) of the Penal Code and thereafter sentenced to mandatory death sentence in Criminal Case No. 2475 of 1997. The particulars being that on 30th June, 1997 in Makadara within Mombasa District jointly with others not before court while armed with dangerous weapon namely a pistol robbed Jesca Situma Nelima cash Kshs. 89,460/= the property of Coast Provincial Hospital.
3. The attack took place in broad day light. The Petitioner was armed with a pistol and he used a Nissan salon car to block the vehicle which was taking the victims to the bank to deposit the cash and ordered them to surrender the cash by brandishing a gun and in the process they threatened to shoot them if they did not surrender.
4. The charge was proved and the Petitioner was jailed to suffer death which was commuted to life imprisonment. The sentence was confirmed in appeal.
5. 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.
6. Mr. Fedha learned counsel for the Director of Public Prosecution has submitted that the Petitioner be sentenced to the 22 years he has already served in the prison.
7. 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.
8. The Petitioner has been in jail for 22 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.
9. The Petitioner is accordingly hereby sentenced to 22 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 20th day of September, 2019.

E. K. OGOLA

JUDGE

In the presence of:

Mr. Fedha for DPP

Petitioner in person

Mr. Kaunda Court Assistant