



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 30 OF 2018

JAMES KIMANI NJUGUNA.....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) of the penal code and thereafter sentenced to mandatory death sentence in Criminal Case No. 525 of 1998. The particulars being that on 7th March, 1998 jointly with others not before court robbed Dickson Kahindi of Kshs. 145,000/=, a radio cassette player and video machine, and immediately before or after the time of the robbery threatened to use actual violence to the said Dickson Kahindi.
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 18th day of September, 2019.

E. K. OGOLA

JUDGE

In the presence of:

Mr. Fedha for DPP

Petitioner in person

