



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 246 OF 2018

(ORIGINATING FROM CRC NO. 198/1995 IN KILIFI LAW COURTS - HON. P. M. NDUNGU [SRM])

IN THE MATTER OF: ARTICLES 19(2), (3)(a), 20(1), (2), 21(1), 22(1) (3) (d), 23(1), (f), 25(a) (c), 26(1), 27(1), (2), 28, 29, (6) (d) (f), 48, 50 (2) (a), (p) (q) OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF: SECTIONS 216 AND 329 OF THE CPC

AND

IN THE MATTER OF: SECTION 296(2) OF THE PENAL CODE

BETWEEN

RASHID MWINYI NGUISA.....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 three counts of robbery with violence contrary to Section 296 (2), particulars being on 31st December, 1994 at about 9.30 a.m. Tiwi Mapriver, Tiwi Location in Kwale District within Coast Province jointly with others not before court robbed Stephen Salmon of his two suit cases containing assorted clothes, one video camera, CD player, two wrist watches and other personal effects all valued at Kshs. 329,000/= and at or immediately before or immediately after the time of such robbery used actual violence to the said Stephen Salmon.
3. The particular of the second count was that on the 31st December, 1994 at 9.30 a.m. at Tiwi Mapriver, Tiwi Location in Kwale District within Coast Province jointly with others not before court robbed Tonny Beal of his hand bag containing assorted clothes, one Sony CD player, one wrist watch, one Olympic Zoon camera and a Sony Recorder and other personal effects all valued at Kshs. 250,730/= and at or immediately before or after the time of such robbery threatened to use actual violence to the said Tonny Beal.
4. The particular of the third count was that on the 31st December, 1994 at 9.30 a.m. at Tiwi Mapriver, Tiwi Location in Kwale District within Coast Province jointly with others not before court robbed Sally Kirkup one suitcase containing assorted clothes, one camera, one wrist watch and other personal effects all valued at Kshs. 139, 322/= and at or immediately before or after the time of such robbery threatened to use actual violence to the said Sally Kirkup.
5. The charge was proved and the Petitioner was jailed to suffer death. The sentence was confirmed in appeal.
6. 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.
7. Mr. Fedha learned counsel for the Director of Public Prosecution has submitted that the Petitioner be sentenced to the 24 years he has

already served in the prison.

8. I have considered the submissions. The Petitioner was involved in a heinous offence in which he threatened violence but we thank God nobody died in the process.

9. The Petitioner has been in jail for 24 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.

10. The Petitioner is accordingly hereby sentenced to 24 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 16th day of September, 2019.

E. K. OGOLA

JUDGE

In the presence of:

Mr. Fedha for DPP

Mr. Magolo for Petitioner

Mr. Kaunda Court Assistant