



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 122 OF 2018

SAID ABEID SAID.....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 offence of robbery with violence contrary to Section 296 (2) of the Penal Code and thereafter sentenced to mandatory death sentence in Criminal Case No. 1020 of 1997. The particulars being that Petitioner jointly with others not before court while armed with dangerous weapons namely knives robbed Daniel Okello Omar of Kshs. 2,000/=, a wrist watch and immediately before or after the time of the robbery used actual violence to the said Daniel Okello Omar.
3. The charge was proved and the Petitioner was jailed to suffer death and 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 21 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 21 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. I have also considered the Social Inquiry Report filed herein on 19th September, 2019 and the Prison Progress Report. Both reports speak favourably of the Petitioner and urge his early release from prison.
8. The Petitioner is accordingly hereby sentenced to 21 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

