

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO. 497 OF 2006

ALEX AFANDE SALAMBA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. I have considered the respective submissions by both parties. The Applicant was charged alongside another with four counts of robbery with violence. He was convicted in counts I, II and III and sentenced to suffer death. His two appeals to the Court of Appeal were dismissed.

2. The judgment in the Court of Appeal was delivered on 20/12/2018 when the Supreme Court had already delivered the decision in **Francis Kariuki Muruwaitetu & Another V Republic**. The decision declared the mandatory death sentence unconstitutional. Pursuant thereto, this court as the first appellate court was ordered to consider the Applicant's mitigation and pass the deserved sentence.

3. I have considered that the Applicant is remorseful. I also consider that although the offence was serious, no one was injured in the robbery. Punishment is intended to act as deterrence and retributive which in my view, the purpose has been fulfilled. I hold therefore that for the 14 years the Applicant has been in custody has served sufficient sentence.

4. I order that he be forthwith set free unless otherwise lawfully held.

Dated and Delivered at Nairobi this 8th day of October, 2019.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Applicant in person.

2. Mr. Momanyi for the respondent