



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO. 26 OF 2018**

**IN THE MATTER OF: THE CONSTITUTION OF KENYA 2010 (SUPERVISORY JURISDICTION AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF AN INDIVIDUAL) UNDER ARTICLE 2B (1) 27 (1) (2), 28, 29 (A) (D) (F), 48 AND ARTICLE 50 (2) (H) (P), 6(A) OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF: ARTICLE 23(1) AS READ WITH ARTICLE 165 OF THE CONSTITUTION IN THE MATTER OF SECTIONS 16 & 329 OF THE CRIMINAL PROCEDURE CODE**

**AND**

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

**BETWEEN**

**CHARLES ODUOR HAINJA..... PETITIONER**

**AND**

**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) in Criminal Case No. 2129 of 1996 and was sentenced to death.
3. 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.
4. Mr. Fedha learned counsel for the Director of Public Prosecution has submitted that the Petitioner be sentenced to 24 years since he has served 24 years now.
5. The Petitioner avers that he was charged with robbery with violence and has now served 23 years in prison and that he is a reformed person. He prays that he be jailed for the time already served of 23 years.

**The Determination**

6. I have considered the petition. The Petitioner regrets what he did. There is a good report of him from the prison. I think he should be given a second chance. I sentence him to the 23 years already served, noting that nobody was injured in the robbery. I herewith release the Petitioner unless validly held.

That is the Judgment of the Court.

**Dated, Signed and Delivered at Mombasa this 15<sup>th</sup> day of October, 2019.**

**E. K. OGOLA**

**JUDGE**

In the presence of:

Mr. Fedha for DPP

Petitioner in person

Mr. Kaunda Court Assistant