



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**PETITION NO. 130 OF 2018**

**CHARLES OKELLO OLALA.....PETITIONER**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT**

**JUDGMENT**

1. Charles Okello Olala (the appellant herein) was convicted and sentenced to death on a charge of robbery with violence contrary to Section 296 (2) Penal Code, the particulars being that on 7<sup>th</sup> day of October, 2002, at 12.00 midnight at Malindi New Market parking yards in Malindi Location within Malindi District of the Coast Province, jointly with others not before court, being armed with dangerous weapons namely pistols and knives, robbed Shadrack Thoya Michael of his motor vehicle registration No. KAP 452Q, Toyota Corolla, white in colour, Ksh. 2,800/= all valued at Ksh. 402,800/= and at or immediately before or immediately after the time of such robbery, threatened to use actual violence to the said Shadrack Thoya Michael.

The appellant denied the charge. Prosecution called a total of six witnesses in support of its case.

2. The Petitioner has exhausted his appellate channels and is now in this court for the purposes of resentencing pursuant to the Supreme Court decision in *Francis Kariokor Muruatetu & Another –Vs- Republic SCK Pet. No. 15 of 2015 (2017) eKLR*.

3. The Petitioner states that he is remorseful and pleads for leniency. He has served seventeen (17) years in jail. He is now 59 years old, has a family of four (4) children.

4. Mr. Fedha for the prosecution submitted that the Petitioner committed the offence while armed with a pistol. The complainant was not injured. However, the crime is a common one and should be punished adequately with a sentence of twenty three (23) years.

5. I have considered the Petition and submissions. The Petitioner states that he has reformed and is willing to rejoin the society. This court has taken note that the offence of robbery with violence is a serious offence. It is however of some consolation that no life was lost in the process. This court has accepted the mitigation of the Petitioner and the fact that he has spent seventeen (17) years in jail. In the result the Petitioner's death sentence is hereby set aside and reversed, and in the place, thereof a sentence is hereby pronounced upon the Petitioner of twenty one (21) years with effect from the date of conviction.

That is the Judgment of the court.

A right of appeal is granted to be exercised in 14 days.

**Dated, Signed and Delivered at Mombasa this 8<sup>th</sup> Day of October, 2019.**

**E. K. O. OGOLA**

**JUDGE**

In the presence of:

Mr. Fedha for State

Petitioner in person

Mr. Kaunda Court Assistant