



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 132 OF 2018

IN THE MATTER OF: THE CONSTITUTION OF KENYA 2010

(SUPERVISORY JURISDICTION AND PROTECTION OF FUNDAMENTAL

RIGHTS AND FREEDOMS OF AN INDIVIDUAL) HIGH COURT

PRACTICE AND PROCEDURE RULES 2013

AND

IN THE MATTER OF: ARTICLE 22(1) OF THE CONSTITUTION

AND

IN THE MATTER OF: ARTICLE 23(1) OF THE CONSTITUTION

AND

IN THE MATTER OF: ARTICLES 19, 20, 21, 22, 23, 24, 25, 27,

28, 48, 50, 258 AND 259 OF THE CONSTITUTION

AND

IN THE MATTER OF: ARTICLE 53(1) OF THE CONSTITUTION

AND

IN THE MATTER OF: SECTIONS 4(2)(A) AND 296(2) OF THE PENAL CODE

AND

IN THE MATTER OF: SECTIONS 322(2) OF THE PENAL CODE

AND

IN THE MATTER OF: SECTIONS 50 OF THE EVIDENCE ACT

BETWEEN

HAMISI SALIM MUNYOKI.....PETITIONER

AND

JUDGMENT

1. The matter before the Court is a petition by the Petitioner for resentencing. The Petitioner is serving a death sentence at Shimo La Tewa prison having been convicted of a charge of robbery with violence in Criminal Case No. SPMC 730 of 1997. He has since served 22 years from the date of arrest.
2. The Petitioner was in possession of firearm at the time of commission of the crime. His victim was a retired nurse from Switzerland who was residing alone at Watamu in Timbono area, Malindi. The victim was however, not injured in the robbery.
3. The Petitioner submitted that he has reformed and should be jailed for the 22 years he has served in jail.
4. On his part the Director of Public Prosecution Mr. Fedha submitted that the Petitioner be jailed for 25 years.
5. I have considered these submissions. The Petitioner appears to me to be remorseful. He also suffers from hypertension and ischaemic conditions which make life more difficult in prison. The Petitioner has learnt his lesson. In my view the objectives of sentencing have been met, and the Petitioner has served time enough to atone for his crime.
6. In the upshot, the Court hereby sets aside the death sentence and substitutes the same with a sentence of 22 years, which, the Petitioner having served the same, the Petitioner is hereby set free and released from prison unless validly held.

That is the Judgment of the Court.

Dated, Signed and Delivered at Mombasa this 14th day of October, 2019.

E. K. OGOLA

JUDGE

In the presence of:

Mr. Fedha for DPP

Petitioner in person

Mr. Kaunda Court Assistant