

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 42 OF 2018

MOHAMMED HASSAN OSMAN.....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. 970 of 1998 and was sentenced to death on 25th March, 1999.
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 has served 21 years and was convicted of robbery with violence and used dangerous weapon but nobody was injured. The Petitioner has reformed.
5. I have considered the submission of the DPP and the circumstances of the case. The Petitioner was convicted for robbery with violence and has served 21 years in prison. The Petitioner is remorseful and has learnt his lesson.
6. This Court is satisfied that the Petitioner be jailed for the time already spent in prison of 21 years with the result that he is now set free unless otherwise lawfully held.

That is the Judgment of the Court.

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

E. K. OGOLA

JUDGE

In the presence of:

Mr. Fedha for DPP

Petitioner in person

Mr. Kaunda Court Assistant