



**REPUBLIC OF KENYA**

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

**CRIMINAL MISC. APPLICATION NO. 26 OF 2019**

**MADARAKA KASYUKO MWENDWA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The applicant was charged with offence of robbery with violence contrary to section 296 (2) of the Penal Code.
2. Particulars being that on 31/5/2010 at Mwingi Township, Mwingi District within Eastern Province jointly while armed with crude weapon namely a hammer robbed Catherine Mutethya Wambua off Kshs.10,000/=, a mobile phone Nokia 2630, one handbag, Equity ATM card and a Sony flash disk all valued at Kshs.18,000/= the property of Catherine Mutethya Wambua and at the time of such robbery used personal violence to the said Catherine Mutethya Wambua.
3. He pleaded not guilty and matter was fully heard. He was sentenced to death.
4. He filed HCCRA No. 10 of 2013 in High Court Garissa which was dismissed after same was fully heard.
5. He was first accused in Mwingi Senior Resident Magistrate's Court Criminal Case No. 547 of 2010. He never appealed against the High Court judgement.
6. He has now sought resentencing pursuant to Supreme Court case of **Muruatetu** where the Apex Court ruled that the mandatory aspect of death sentence is unconstitutional.
7. The prosecution does not oppose the application for resentencing.
8. In view of the circumstances of this case, I find it fit to make the following orders:

*(1) The death sentence is set aside.*

*(2) The matter is sent back to Magistrate's Court at Mwingi for resentencing after considering the mitigation of the applicant plus the period he has been in custody since arrest.*

**DATED, DELIVERED AND SIGNED AT GARISSA THIS 4<sup>TH</sup> DAY OF OCTOBER, 2019.**

.....

**C. KARIUKI**

**JUDGE**