



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 72 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

BETWEEN

1. PHILIP LEPUYAPUI

2. LENKANUS LENAKUYA.....PETITIONERS

AND

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT

1. The matter before the Court is a petition by the Petitioners for resentencing.
2. The Petitioners herein were charged with robbery with violence contrary to Section 296 (2) in Criminal Case No. 2297 of 2002 and were sentenced to death. They lost all their appeals.
3. The Petitioners are 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 Petitioners were convicted with offence of robbery with violence at night. They used swords and rungas to attack the victims. They robbed them of items and cash. They have served 15 years since conviction but 18 years since arrest. Counsel submitted that they be jailed for 18 years that they have served since nobody was injured in the process. The Petitioners have reformed and have been trained in prison and they can be released to the society.
5. I have considered the submissions of the DPP and the circumstances of the case. The Petitioners were convicted for robbery with violence and have served 18 years in prison. The purpose of sentencing is to achieve the objectives of retribution, rehabilitation and reformation. The Petitioners committed the offence together. Their various progress Reports from prison speak well about them. I have also looked at their submissions and observed their demeanour in Court. They seem to me to have indeed reformed and are ready to rejoin a free society.
6. This Court had directed a Social Inquiry Report to be filed for both Petitioners. The reports were filed herein on 18.9.19. the reports

speak well of the Petitioners and that they are likely to be received well by their families. I am satisfied that the objectives of sentencing have been achieved in this case and that the Petitioners should be released to go outside and advocate that crime does not pay. This court will give them a second chance.

7. Accordingly, the Court hereby sets aside the death sentence and in place therefore substitutes 18 years already served by the Petitioners with the upshot that the Petitioners are hereby set free and released unless lawfully 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

Petitioners in person

Mr. Kaunda Court Assistant