



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 182 OF 2018

IN THE CONSTITUTION OF KENYA 2010 (SUPERVISORY JURISDICTION

AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

OF AN INDIVIDUAL) HIGH COURT PRACTICE AND PROCEDURE RULES 2013

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

AND

IN THE MATTER OF: ARTICLES 19, 20, 21, 22, 23, 24, 25, 27, 48, 50, 258 & 259 OF THE CONSTITUTION OF KENYA

AND

BETWEEN

DAMWENA HASSAN MACHEA.....PETITIONER

AND

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

**JUDGMENT**

1. The Petitioner **DAMWENA HASSAN MACHEA** was charged with the offence of robbery with violence contrary to Section 296 (2) of the Penal Code in Criminal Case No. 4369 of 1999 and sentenced to death. His appeal to the Court of Appeal was dismissed on 27<sup>th</sup> September, 2001.
2. The petition is now before the Court for resentencing pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Another vs. Republic [2017] eKLR** which decided that a mandatory death sentence is unconstitutional.
3. The Petitioner has been in custody for 21 years. He submitted that the said period of 21 years is enough punishment for the crime he was convicted for, and that he has totally changed and fully rehabilitated.
4. Mr. Fedha learned counsel for the prosecution submitted that the Petitioner be sentenced to 21 years since he has served 21 years now.
5. I have considered the submissions. The principle in sentencing is that the Court should take into account the mitigation offered by the Petitioner, the facts of retribution, rehabilitation and reformation. The Court should ask itself whether the Petitioner is remorseful, and has sufficiently been rehabilitated and reformed to reasonably be expected to assume life in a free and orderly society. The Court must also look at the nature of the offence the Petitioner was convicted for, and it has effected the victims.

**The Determination**

6. I have considered the petition. The Petitioner regrets what he did. There is a good report of him from the prison. I sentence him to the 21 years already served, noting that nobody was injured in the robbery. I herewith release the Petitioner unless validly held.

That is the Judgment of the Court.

**Dated, Signed and Delivered in Mombasa this 19<sup>th</sup> day of November, 2019.**

**E. K. OGOLA**

**JUDGE**

In the presence of:

Mr. Fedha for DPP

Petitioner in person

Mr. Kaunda Court Assistant