

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

PETITION NO. 21 OF 2018

IBRAHIM ALI MOHAMED.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant was charged with two counts and alternative charge. **Count I:** robbery with violence contrary to section 296(2) of the Penal Code. Particulars being that on 31st day of August 2013 at Dagahaley Refugee Camp in Dadaab Distrit with other not before court robbed one Mannah Abdullahi Hamud Kshs.35,000/= gold chain and rings valued at Kshs.25,000/= by use of violence or threatening to use violence.

2. **Count II** was also of robbery with violence contrary to section 296 (2) of the Penal Code. Particulars too are as per the charge sheet that the accused robbed one Nurta Barre Ibrahim.

3. The accused is also faced with the alternative count of handling stolen property (goods) contrary to section 322(1) (3) of the Penal Code. Particulars being that on 31st day of August 2013 at Dagahaley Refugee Camp in Dadaab District otherwise than in the course of stealing dishonestly retained one mobile phone Nokia 1280 knowingly or having reasons to believe it to be stolen goods the property of Nurta Ibrahim.

4. He pleaded not guilty and trial ensued. He was found guilty and convicted and sentenced to death.

5. He appealed in the High Court vide Appeal No. HC Garissa HCCRA No. 21 of 2015 which was dismissed after full hearing. He never appealed again.

6. He has moved this court for resentencing pursuant to Supreme Court Case of *Muruatetu* which held that the mandatory aspect of death sentence is unconstitutional.

7. The State does not oppose the application. Thus the court makes the following orders:

(1) The death sentence in Garissa Chief Magistrate's Court Criminal Case No. 1380 of 2013 is hereby set aside.

(2) The applicant is referred back to Chief Magistrate's Court Garissa for resentencing in Criminal Case No. 1380 of 2013 for sentencing after considering mitigation and period he has been in custody since the time of arrest.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 5TH DAY OF NOVEMBER, 2019.

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C. KARIUKI

JUDGE