



**REPUBLIC OF KENYA**

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

**CONSTITUTIONAL PETITION NO. 1 OF 2019**

**JOSEPH STEPHEN JUMA.....PETITIONER**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being a petition for resentencing in Siaya PMCRC No. 1066*

*of 2006 Dated 24.10.2007 before Hon. D.A.A. KAYILA –P.M.)*

**JUDGMENT**

1. The Petitioner herein **JOSEPH STEPHEN JUMA** is a Convict of **Robbery with Violence vide Siaya P.M's Court Cr. Case No 1066 of 2006**.
2. He was sentenced to death. He appealed to the High Court at Kisumu vide **Cr. A. No. 9 of 2008** which was dismissed.
3. He did not tire. He filed a second appeal to the Court of **Appeal vide C.A. Cr. Appeal No. 48 of 2009 at Kisumu**. The Court of Appeal upheld the decisions of the trial Court and the High Court.
4. The death sentence was later commuted to life imprisonment by His Excellency the President. Light shone at the end of the time for tunnel for the Convict/Petitioner when the Supreme Court vide **Supreme Court Petition Nos. 15 and 16 of 2015 Francis Karioko Muruatetu V. Republic [2917] eKLR** held that the mandatoriness of death sentence in Capital offences is unconstitutional because it deprives the trial Court of discretion in sentencing and denies an Accused/Convict an opportunity to mitigate for the Court to mete out appropriate sentences, having regard to the circumstances of each case.
5. For avoidance of doubt, the decision by the Supreme Court did not say that death sentence cannot be imposed in appropriate cases.
6. Following the above decision, there has been an avalanche of Constitutional Petitions from Convicts who had exhausted their rights of appeal, returning to Court seeking for resentencing because all Courts are bound by the decision of the Supreme Court.
7. In this case, the Convict/Petitioner seeks for resentencing by his petition filed on 18.1.2009. His co-convicts **Akim Azed Wakoli and Edwin Wafula Kulima** benefitted from resentencing after their Constitutional Petitions which were heard and determined by this Court. This was vide **Siaya HC Const Petition No. 16 of 2018** which were determined on 20.11.2018. The Petitioner were resentenced to serve 15 years imprisonment. This was after the Court satisfied itself that the Convicts were reformed and rehabilitated while in Prison, having served 12 years imprisonments and the fact that the Complainant did not sustain very serious injuries. In addition, the convicts mitigated regretting the offence and promising not to reoffend.
8. When this Petitioner appeared in Court for hearing of his Petition, he did not express himself in terms of the written Petition. He only kept saying that the Court should help him because he has diabetes, he is suffering in prison, he is an orphan and that he left at home a family which is suffering.
9. I therefore gave him time to get a paralegal in Prison to guide him and when he appeared on 16.9.2019 he had filed his submission with the assistance of a paralegal. He added that he has learnt up to grade 1 tailoring, Bible course and trainings that have helped him reform. He stated that he committed the offence because he had no income and that he had bad friends in Kitale who led him into the crime.
10. That he can now work for himself. And availed original certificates of the life's skills that he has learnt in Prison.
11. In his written submissions he regrets committing the offence, that he is a first offender and Prison life has taught him of the consequences of his actions.

12. I have considered all the mitigations and the fact that the Petitioner jointly with others committed a very heinous crime of **Robbery with Violence**. The Complainant was lucky to be alive and the offence is prevalent and traumatizing to the victims. The Petitioner has been in Prison for 13 years and has learnt his lessons. If his mitigations are anything to go by, he should never reoffend. Prison has taught him life's skills which he can utilize to take care of himself, his family and the Community at large although he was unable to express himself verbally in Court, his body language and appearance demonstrate guilt and remorse and illness.

13. The Petitioner and his co-convicts robbed Bishop George Ochieng Kadega of Style Church. They were armed with firearms, rungs and pangas.

14. Their finger prints nabbed them to great detail after thorough investigations by the Police.

15. There was no mistaken conviction at all. The Petitioner and his co-accused deserved deterrent sentence.

16. He has, like his co-convicts demonstrated remorse and I am satisfied that the Petitioner who is now aging and sickly with diabetes deserves a chance to be reintegrated back into the society to live a more productive meaningful life.

17. For the above reasons, I hereby allow the Petition for resentencing and order that the Petitioner/ Convict shall be released from Prison after serving 15 years imprisonment to be calculated from 1.11.2006 the date of his arrest, in accordance with **the proviso to Section 333 (2) of the Criminal Procedure Code**.

18. Orders accordingly.

**Dated, signed and delivered at Siaya This 5<sup>TH</sup> Day of November, 2019.**

**R. E. ABURILI**

**JUDGE**

**In the presence of:**

The Petitioner in person

Mr. Okachi Senior Principal prosecution Counsel for Respondent State

CA: Winnie and Modestar