



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 6 OF 2019

NIXON OMONDI OKOTH.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT

1. The Petitioner herein seeks a resentencing pursuant to the Supreme Court decision in **Francis Karioko Muruatetu vs. Republic [2017] eKLR**.
2. The Petitioner was tried and convicted of robbery with violence in the Vihiga Chief Magistrate Court Criminal Case No. 388 of 1997. He was sentenced to a mandatory death sentence and has been in jail for 23 years. The Petitioner was involved in robbery with violence where he and his accomplices were armed with dangerous weapons. They broke into several shops in Vihiga and used the dangerous weapons they had to assault some of the complainants. The incident of the night of 17th February 1997 resulted to the loss of four lives (three watchmen and one taxi driver). The Petitioner was subsequently arrested with some of the stolen goods.
3. **Mr. Fedha** learned counsel for the prosecution submitted that the prosecution proved its case beyond reasonable doubt and that lives were lost during the said robbery. He calls for a deterrent sentence of 50 years including years the 23 years.
4. The Petitioner submits that he has served 23 years in jail and during the said years he has known God and what God wants him to do and once released he wishes to preach the gospel to the youth. He further submits that he never offended anyone at home and even within his county and he shall be given a second chance to rejoin the society.
5. I have carefully considered the issue at hand. The aim of punishment is Community Protection, Deterrence, Retribution, Restorative Justice, Rehabilitation and Reformation. The offence which was committed by the Petitioner is grave and should be properly punished. The Petitioner is now 44 years. He has a good record in prison and there is an indication that he has reformed.
6. The Social Report about him by the Senior Probation Officer dated 16th September 2019 indicates a person who may not be a risk to society. A robbery with violence is a serious offence and should be properly punished. In the case of the Petitioner four people died as a result of a robbery he was involved in and it was proved beyond reasonable doubt that he actual inflicted harm one a victim.
7. The Petitioner has served 23 years in prison. I have considered *The Sentencing Policy Guidelines, 2016* and its objectives to promote transparency, consistency and fairness in sentencing (See *Michael Kathewa Laichena & another v Republic [2018] eKLR*).
8. I have also considered that the robbers were armed with dangerous weapons and the robbery resulted to the death of four (4) innocent souls. I re-sentence the petitioner to twenty eight (28) years imprisonment commencing from the date of his arrest.

That is the Judgment of the Court.

Dated, Signed and Delivered at Mombasa this 4th day of November, 2019.

E. K. OGOLA

JUDGE

In the presence of:

Mr. Fedha for DPP

Petitioner in person

Mr. Kaunda Court Assistant