



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 48 OF 2018

**IN THE MATTER OF: THE CONSTITUTION OF KENYA 2010 (SUPERVISORY
JURISDICTION AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOM 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

PETER WARUI MUGO.....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 Mombasa Chief Magistrate Court Criminal Case No. 3463 of 1999. He was sentenced to death and has been in jail for 20 years. The Petitioner was involved in robbery with violence where two victims who were shop owners were attacked just after opening their shop. They were ordered to lie down as the Petitioner pointed a pistol at them. The Petitioner and his accomplice tied the hand of the victims using ropes and covered their mouths with cello tape and threatened them with death if they dared raise an alarm. They broke into the victims safe, took Kshs. 32,000/= and wrist watches belonging to the two victims. Before they left the Petitioner shot in the air to scare people away.
3. **Mr. Fedha**, learned counsel for the prosecution, prayed for a definite sentence of 25 years including years served due to the circumstance of the offence.
4. The Petitioner submitted that he has served 20 years in jail and during the said years he has been peaceful with fellow inmates and prison authorities since he has undergone several rehabilitation, spiritual and commercial programs which will assist him when he re-joins 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 55 years. He has a good record in prison and he is humble polite God fearing and he is an SDA elder.

6. The Petitioner is remorseful of his past. He did not cause any bodily harm to the victims. He states that he has reformed. His submission is backed by the prison progress report from Shimo La Tewa Maximum Security Prison which states that the Petitioner is well behaved and reformed and has undertaken biblical studies.

7. The Probation Report filed in Court on 28th August, 2019 is favourable to the Petitioner, and proposes that he be released back to society and placed under their care and supervision for further rehabilitation, resettlement and re-integration.

8. The Petitioner has served 20 years in prison. I have considered *The Sentencing Policy Guidelines, 2016* and its application which is intended to promote transparency, consistency and fairness in sentencing (See *Michael Kathewa Laichena & another v Republic [2018] eKLR*).

9. Accordingly, I accept the submissions of the prosecution that 25 years is adequate punishment. However, considering that there was no actual bodily harm involved in the robbery, this Court orders that the Petitioner be and is hereby sentenced to (23) years in prison. The Petitioner has served twenty (20) years already. The remaining three (3) years shall be suspended during which time the Petitioner shall be under probation. Accordingly, Judgment is made as under:

I. The Petitioner is sentenced to twenty three (23) years in prison.

II. Of the above twenty three (23) years three (3) years are suspended to be served under probation.

III. The **Busia County Probation Officer** shall supervise this order on probation.

IV. During the probation period the Petitioner shall not be engaged in any offence, and if he does, the suspended sentence herein will automatically lapse, and the Petitioner shall be taken to Shimo La Tewa Prison to serve the balance of the sentence, and any other lawful sentence.

V. The Petitioner is herewith forthwith released from prison unless otherwise lawfully held.

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