



**THE REPUBLIC OF KENYA**

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

**PETITION NO. 87 OF 2018**

**RAMADHAN MOHAMED GOVI..... PETITIONER**

**VERSUS**

**THE DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT**

**JUDGMENT**

1. The Petitioner herein was charged and convicted with the offence of Robbery with Violence contrary to Section 296(2) of the Penal Code in Mombasa Chief Magistrate Criminal Case No. 3304 of 1997 and sentenced to death. The Petitioner subsequently lodged an appeal and his appeal was dismissed.

2. Brief facts of the case are that on 23<sup>rd</sup> day of October, 1997 at 9 a.m. he Petitioner together with others broke into the complainant's shop and robbed Mr. Joel Kamau, Jane Wanjiru and John Ngutungi. During the robbery they injured Mr. Joel Kamau by beating him up, killed Francis Njuguna by cutting him with a panga and injured Mr. Muiruri by cutting his ears and drinking his blood, stabbing him and beating him up. Mr. Muiruri escaped death by jumping into Ramisi River. The Petitioner was armed with G3 rifles, panga, bows, arrows and sledge hammer.

**Hearing and Submissions**

3. The Petitioner filed his submissions and the petition came up for hearing on 25<sup>th</sup> September, 2019.

4. It was the Petitioner's submissions that he regrets his action and should be jailed for 25 years.

5. The Respondent opposed the Petition, submitting that taking into account the circumstances of the case a deterrent sentence of 50 years including the 22 years served would be sufficient.

**The Determination**

6. On the issue of sentence, this court relies on the Supreme Court case in **Francis Karioko Muruatetu & Another -vs- Republic [2017] Eklr declared** where the mandatory nature of the death sentence as provided for under Section 204 of the Penal Code was found to be unconstitutional. To that extent this court can now resentence the Petitioner.

7. The Petitioner committed serious crimes. The manner of committing the said offence was so cruel and ended in death of one person and injuries to several others. The Petitioner then drunk the blood of his victim. There is no evidence that the Petitioner is remorseful, or that he has reformed.

8. This court must send out a clear message to would be murderers that once convicted they must pay the penalty for their crimes.

9. I hereby set aside the death sentence imposed on the Petitioner and substitute the same with a jail term of fifty (50) years from the date of arrest. Right of Appeal in 14 days.

**Dated, Signed and Delivered in Mombasa this 5<sup>th</sup> day of November, 2019.**

**E. K. O. OGOLA**

**JUDGE**

In the presence of:

Mr. Fedha for DPP

Petitioner in person

Mr. Kaunda Court Assistant