



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 131 OF 2018

**IN THE CONSTITUTION OF KENYA 2010 (SUPERVISORY JURISDICTION
AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF
AN INDIVIDUAL) HIGH COURT PRACTICE AND PROCEDURE RULES 2013
IN THE MATTER OF: SECTION 18(1) (2) POLICE ACT CAP 84 LAWS OF KENYA**

AND

IN THE MATTER OF: ARTICLE 22(i) OF THE CONSTITUTION

AND

**IN THE MATTER OF: ARTICLES 19, 20, 21, 22, 23, 24, 25,
27, 48, 50, 258 & 259 OF THE CONSTITUTION OF KENYA**

AND

BETWEEN

SAMSON KATANA KAZUNGU.....PETITIONER

AND

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT

1. The Petitioner **SAMSON KATANA KAZUNGU** was charged with the offence of robbery with violence contrary to Section 296 (2) in Criminal Case No. 207 of 2004 and indecent assault of a female contrary to Section 144 (1) of the Penal Code and three counts of assault causing actual bodily harm contrary to Section 251 of the Penal Code and further charged with handling stolen goods contrary to Section 322 (2) of the Penal Code and sentenced to death. His appeal to the Court of Appeal was dismissed on 18th July, 2008.

2. The petition is now before the Court for resentencing pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Another vs. Republic [2017] eKLR** which decided that a mandatory death sentence is unconstitutional.

3. The Petitioner has been in custody for 16 years. He submitted that the said period of 16 years is enough punishment for the crime he was convicted for, and that he should be released to go home.

4. Mr. Fedha for the prosecution submitted that the offence committed was heinous and should be punished with a sentence of 25 years.

5. I have considered the submissions. The principle in sentencing is that the Court should take into account the mitigation offered by the Petitioner, the facts of retribution, rehabilitation and reformation. The Court should ask itself whether the Petitioner is remorseful, and has sufficiently been rehabilitated and reformed to reasonably be expected to assume life in a free and orderly society. The Court must also look at the nature of the offence the Petitioner was convicted for, and it has effected the victims.

6. The particulars of the charge of which the appellant was convicted were as follows:

“On the 25th day of April, 2003 at Roka Village in Kilifi District within the Coast Province, jointly with others not before court, while armed with dangerous weapons namely pangas and rungas, robbed Jonathan Kenga Kitsao of 2 mobile phones, make Sagem and Siemens, a radio cassette make Sony, a small radio make Sonitec, cash Kshs. 30,000/= and assorted shop goods all valued at Kshs. 65,000/= and at or immediately before or immediately after the time of such robbery used actual violence on the said Jonathan Kenga Kitsao.”

7. I have considered the submissions of the Petitioner. They are very brief. The Petitioner does not show any remorse. There is no indication that he has reformed or is willing to live within the law in a free society. In my view, the three objections of sentencing being retribution, rehabilitation and reformation are yet to be realized in the Petitioner, and it is the finding of this Court that he should not be released yet.

8. Although the prosecution has submitted that the Petitioner be jailed for 25 years, I have decided to jail the Petitioner for 22 years.

9. Accordingly, this Court hereby sets aside the death sentence and in place therefore imposes a term for 22 years from the date of arrest.

That is the Judgment of the Court.

Dated, Signed and Delivered in Mombasa this 11th day of November, 2019.

E. K. OGOLA

JUDGE

In the presence of:

Mr. Fedha for DPP

Petitioner in person

Mr. Kaunda Court Assistant