

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

PETITION NO. 131 OF 2018

ELIM ELIM JOSEPH.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING ON RE-SENTENSING

1. The petitioner, **Elim Elim Joseph**, with another were charged before the Principal Magistrate's Court at Isiolo with the offence of robbery with violence contrary to **section 296(2) of the Penal Code**.
2. It was alleged that on 2/2/2007 at Isiolo Township, within the then Eastern Province jointly with another while armed with a dangerous weapon, namely, a kitchen knife they robbed **Ali Hassan** of cash Kshs. 4,300/- and at or immediately before or immediately after the time of such robbery threatened to use actual violence on the said **Ali Hassan**.
3. His appeals, both to this Court (Kasango and Emukule JJ) and the Court of Appeal, were dismissed on 18/6/2010 and 30/4/2014, respectively.
4. Vide his Motion on Notice dated 18/9/2019, the petitioner has petitioned this Court to review his sentence on the basis of the Supreme Court decision in the case of **Francis Muruatetu and Others vs Republic [2017] eKLR**.
5. In that case, the Supreme Court of Kenya held that the mandatory nature of the death sentence under **Section 204** of the Penal Code was unconstitutional as it denied the Court its discretion in sentencing. The Court proceeded to set out the criteria or the principles that should guide a Court in sentencing. Some of the considerations are *age of the offender, being a first offender, whether the offender pleaded guilty, the character and record of the offender, commission of the offence in response to gender-based violence, remorsefulness of the offender, the possibility of reform and social re-adaptation of the offender and any other factor that the Court considers relevant*.
6. Though the Supreme Court was dealing with the offence of murder, the view I take is that the same principle applies in other cases where the law provides for a mandatory death sentence including robbery with violence. **See** the Court of Appeal decision in **William Okungu Kittiny vs. Republic [2018] eKLR**.
7. I have considered the foregoing and the circumstances under which the offence was committed. The appellant was in the company of another, the value of the property robbed was Kshs. 4,300/-. The victim was not injured.
8. The state submitted that the death sentence be maintained or in the alternative, a sentence of not less than 20 years be meted out.
9. Accordingly, taking into consideration the facts of the case and the mitigation given, I set aside the death sentence and substitute therefor with a sentence of 10 years imprisonment. The sentence is to run from the day of first conviction.

DATED AND DELIVERED AT MERU THIS 3RD DAY OF DECEMBER, 2019.

A. MABEYA

JUDGE