



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

PETITION NO. 5 OF 2018

CONSOLIDATED WITH PETITION NOS. 6, 12,

84, 86 & 88 OF 2018

BETWEEN

FRANCIS KARIUKI NJIRU1ST PETITIONER

JOSEPH KANYITHIA BAARIU 2ND PETITIONER

JOSEPH KITHEKA MUINDI..... 3RD PETITIONER

PAUL KIMATHI M'ITONGA4TH PETITIONER

VERSUS

REPUBLICRESPONDENT

RULING ON RE-SENTENSING

1. The petitioner, **Francis Kariuki Njiru, Joseph Kanyithia Baariu, Joseph Kitheka Muindi** and **Paul Kimathi M'Itonga**, with others were charged before the Chief Magistrate's Court at Meru with the offence of robbery with violence contrary to **section 296(2) of the Penal Code**.
2. It was alleged that on 27/11/1993 at Ntima Location, Kaaga area, in Meru Township, jointly with others not before the court, while armed with dangerous or offensive weapons, viz. Pangas, "rungus" and axes they robbed **Dr. Joel Muthuri** of Kshs. 245,000/- in cash, two wrist watches, a pair of shoes, a spear, two Somali swords, a Masai knife, two bows, 10 arrows in a quiver and a motor vehicle registration No. KLG 130 and immediately before or immediately after the time of the robbery wounded **Dr. Joel Muthuri** and his wife **Martha Kiende Muthuri**.
3. Their appeals, both to this Court (A. G. A. Etyang J) and the Court of Appeal, were dismissed on 2/11/1998 and 30/11/2001, respectively.
4. Vide their respective Petitions filed on various dates in 2018, the petitioners petitioned this Court to review their sentences 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 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 the instant case of 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 petitioners robbed the victim various items and wounded him and his wife. No doubt it was a terrifying night for the victims.
8. The state submitted for a reduced sentence of 20 years. On their part, each of the petitioners filed their respective submissions which

contained their mitigation. They also filed the recommendations by the Prison authorities. The Court has considered all the foregoing, the ages of the Petitioners and the fact that they have been in custody since 1994.

9. Accordingly, taking into consideration the facts of the case, the report of the Prison Authorities and the mitigation given, I set aside the death sentence (as commuted to life) and sentence the petitioners to the period they have already served.

10. This re-sentencing is only in respect of the conviction and sentence for which the Court of Appeal rendered itself on 30/11/2001 in the **Nyeri Criminal Appeal No. 6 of 2001**, only and no other.

11. The petitioners may be set forthwith at liberty unless otherwise lawfully held.

DATED and **DELIVERED** at Meru this 10th day of December, 2019.

A. MABEYA.

JUDGE