

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

PETITION NO. 73 OF 2018

GEORGE GIKUNDI MUNYI.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING ON RE-SENTENSING

1. The petitioner, **George Gikundi Munyi**, with others were charged before the Principal Magistrate's Court at Maua with the offence of robbery with violence contrary to **section 296(2) of the Penal Code** and one count of malicious damage to property contrary to **section 339 of the Penal Code**.

2. On the charge of robbery, it was alleged that on 19/9/1999 at about 9.00 pm at Kalitheria along Kianjai/Ruiri road in Meru, within the then Eastern Province, the petitioner with others jointly with others while armed with dangerous weapons to wit panga, rungu, axes, crow bars robbed **PC Justus Baariu** of a motor vehicle registration number KAK 757L make Toyota Corolla valued at Kshs. 450,000/-, cash 2,500/ and at or immediately before or immediately after the time of such robbery injured the said **PC Justus Baariu**.

3. His appeals, both to this Court (Lesiit and Kasango JJ) and the Court of Appeal, were dismissed on 3/3/2011 and 26/2/2015, respectively.

4. Vide his Motion on Notice dated 12/4/2018, 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 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 appellant was in the company of others, the value of the property robbed was well over Kshs. 450,000/-. The victim was injured in the process of the robbery. Violence was meted out to the victims.

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, further considering the pre-sentence report dated 26/6/2019, I am satisfied that the long period the petitioner has been in custody, since 1999 is enough punishment. I set aside the death sentence and sentence the petitioner to the period he has served. He may be set forthwith at liberty unless otherwise lawfully held.

DATED and **DELIVERED** at Meru this 9th day of December, 2019.

A. MABEYA

JUDGE