

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

PETITION NO. 23 OF 2019

GEORGE KIMATHI MICHUBU PETITIONER

VERSUS

REPUBLIC RESPONDENT

RULING ON RE-SENTENSING

1. The petitioner, **George Kimathi Michubu**, with another 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*.
2. It was alleged that on 30/6/2004 at Njohne Sub-location, Kiengu Location in the then Meru North District, they jointly robbed **Stephen Kirimi** of Kshs. 1,200/- and at or immediately before or immediately after the time of such robbery struck the said **Stephen Kirimi**.
3. His appeals, both to this Court (Sitati and Lenaola JJ) and the Court of Appeal, were dismissed on 28/9/2006 and 29/5/2013, respectively.
4. Vide his Motion on Notice dated 19/6/2019, 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 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 another, the value of the property robbed was Kshs. 1,200/-. Although the victim was hit, the injuries were not serious.
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, the report of the Prison Authorities and the mitigation given, considering that the petitioner has been in custody for over 15 years now, I opine that he has been punished enough. I set aside the death sentence and sentence the petitioner to the period he has already served. He may be set forthwith at liberty unless otherwise lawfully held.

DATED and DELIVERED at Meru this 11th day of December, 2019.

A. MABEYA

JUDGE