



THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 96 OF 2018

HARUN STEPHEN MESHAK.....PETITIONER

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGMENT

1. The Petitioner herein was charged and convicted with the offence of Robbery with Violence contrary to Section 296(2) of the Penal Code in Mombasa Chief Magistrate Criminal Case No. 434 of 2009 and sentenced to death. The Petitioner subsequently lodged an appeal and his appeal was dismissed.

2. Brief facts of the case are that on 10th March, 2009 the Petitioner while armed with a pistol together with others robbed owner of Likizo Cottages, Dr. Kurt Lux and his colleagues' mobile phones and cash.

Hearing and Submissions

3. Parties filed their submissions and the petition came up for hearing on 25th September, 2019.

4. It was the Petitioner's submissions that he regrets his action and is sickly at 72 years.

The Determination

5. On the issue of sentence, this court relies on the Supreme Court case in **Francis Karioko Muruatetu & Another -vs- Republic [2017] eKLR declared** where the mandatory nature of the death sentence as provided for under Section 204 of the Penal Code was found to be unconstitutional. To that extent this court can now resentence the Petitioner.

6. The Petitioner has already served 10 years in custody. He is remorseful, sickly and now 72 years old.

7. Under the circumstances this court is satisfied that the 10 years behind the bars is sufficient punishment for the Petitioner.

8. The upshot is that the Petitioner is hereby sentenced to 10 years served, with the result that the Petitioner is hereby released and set free unless lawfully held.

Dated, Signed and Delivered in Mombasa this 10th day of December, 2019.

E. K. O. OGOLA

JUDGE

In the presence of:

Mr. Fedha for DPP

Petitioner in person

