

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

PETITION NO. 31 OF 2019

JAMES NJLITHIA.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING ON RE-SENTENSING

1. The Petitioner, **James Njilithia**, was charged before the Chief Magistrate's Court at Meru with robbery with violence contrary to **Section 295 as read with Section 296(2) of the Penal Code**.
2. It was alleged that on 26/7/2001 at Meru township, Ntima Location within Eastern Province, with others not before Court armed with offensive weapons namely rungs and swords, the petitioner robbed **Joseph Munene** of cash Kshs. 5,000/-, one jacket, wrist watch and cap all valued at Kshs.6,650/- and at or immediately before or immediately after the time of such robbery, he used personal violence to the said **Joseph Munene**.
3. After the trial, the petitioner was found guilty and sentenced to death. Being aggrieved by that decision, the petitioner appealed to this court. In the judgment (Onyancha and Okwengu JJ) made on 1/7/2004, the conviction and sentence were upheld. His appeal to the Court of Appeal was likewise dismissed on 27/10/2006.
4. Vide his Motion on Notice dated 18/9/2019, the petitioner 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 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 petitioner was in the company of others, the value of the property robbed was valued at Kshs. 6,650/- and the victim was injured in the process.
8. When the Court asked the petitioner to mitigate, he said that he had no mitigation to offer. The state submitted that the death sentence be maintained.
9. Accordingly, taking into consideration the facts of the case, the prisons' report and the lack of any mitigation on the part of the petitioner, it is clear that although the petitioner has been in custody for 19 years, he is not remorseful. In the circumstances, I set aside the death sentence passed against him and substitute therefor a sentence of life imprisonment.

DATED and DELIVERED at Meru this 3rd day of December, 2019.

A. MABEYA

JUDGE