



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**MISC. CRIMINAL APPLICATION NO. 17 OF 2018**

**STEPHEN KINOTI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING ON RE-SENTENSING**

1. The Petitioner, **Stephen Kinoti**, 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 17/2/1998 at Kaguma Trading Centre, Gatimbi Location, Meru Central District jointly with others not before the court while armed with an offensive weapon namely a knife, he robbed **Simon Kirema** of cash Kshs. 8,000/- and at the time of such robbery wounded him.
3. At 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 (Juma & Tuiyot JJ) dated 14/2/2002 the conviction and sentence were upheld. His appeal to the Court of Appeal was likewise dismissed on 19/5/2006.
4. He moved 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 when they robbed **Simon Kirema** of Kshs. 8,000/- and stabbed the victim several times on the head, stomach, neck, back and hand then proceeded to ransack his house and before leaving him for dead.
8. The petitioner a first time offender and expressed remorse for what he has done during mitigation. The state did not object to the re-sentencing. Moreover, I have taken into account the time spent in pre-custody under the provision of **Section 333(2) of the Criminal procedure Code CAP 75 of the Laws of Kenya**.
9. In view of the foregoing, I set aside the death sentence and substitute therefor with a sentence of twenty (20) years imprisonment from 1<sup>st</sup> January 2000.

**DATED and DELIVERED at Meru this 11<sup>th</sup> day of December, 2019.**

**A. MABEYA**

**JUDGE**