



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**PETITION NO.75 OF 2018**

**CORAM: CHERERE- J.**

**BETWEEN**

**BOND JAMES ONYANGO.....PETITIONER**

**AND**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

1. The petitioner has petitioned this court for resentencing. The Petitioner has placed reliance on the Supreme Court decision in **Francis Karioko Muruateru & Another v Republic SCKPet. No. 15 OF 2015 [2017] eKLR** declaring the mandatory death sentence for the offence of murder unconstitutional.

2. In the case of **William Okungu Kittiny v Republic KSM CA Criminal Appeal No. 56 of 2013 [2018] eKLR**, the Court of Appeal applied the **Muruatetu** decision *mutatis mutandis* to the provisions of **section 296(2)** of the **Penal Code (Chapter 63 of the Laws of Kenya)** which imposes the mandatory death penalty for the offence of robbery with violence and held that the Supreme Court decision opened the door for review of death sentences even in finalized cases.

3. The petitioner, **BOND JAMES ONYANGO** was charged, convicted and sentenced to death for the offence of robbery with violence contrary to section 296(2) of the Penal Code (Chapter 63 of the Laws of Kenya) at a trial before the **Maseno** Principal Magistrate's Court in **Criminal Case No. 765 of 2003**.

4. The Petitioner appealed the decision of the trial court in **Kisumu High Court, Criminal Appeal No. 143 of 2005**. The appeal was dismissed on 14th June, 2007.

5. The Petitioner's second Appeal, **Kisumu Criminal Appeal No. 312 of 2007** was dismissed on 5th December, 2008.

6. The petitioner has already had the benefit of his death sentence commuted to life imprisonment by His Excellency the President under the Power of Mercy conferred under **Article 133** of the Constitution.

7. I have considered the decision in **William Okungu Kittiny v Republic [2018] eKLR** where the Court of Appeal remitted the case to the trial court for sentence rehearing. Since that decision is binding on this court, I find that the appropriate order in this matter is to remit the case to the trial court to re-consider the facts as they existed at the time of sentencing and impose an appropriate sentence in light of the fact that the mandatory death penalty has been declared unconstitutional.

8. Consequently, the Petition succeeds.

***1) The Petitioner's case is remitted to Maseno Magistrate's Court for mitigation and re-sentence.***

***2) Orders accordingly***

**DATED AND DATED IN KISUMU THIS 1st DAY OF November 2018**

**T. W. CHERERE**

**JUDGE**

**Read in open court in the presence of-**

**Court Assistant** - Felix

**For the Petitioner** -

**For the State** -