

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

CRIMINAL REVISION NO. 111 OF 2018

REPUBLIC.....RESPONDENT

VERSUS

DOUGLAS KINYUA NJERU.....APPLICANT

R U L I N G

1. Douglas Kinyua Njeru, the applicant herein has brought an application by way of undated Notice of Motion filed on 9th May, 2018 asking this court to review his sentence and re-sentence him in view of the Supreme Court's decision in **FRANCIS K. MURUATETU & ANOTHER -VS- REPUBLIC [2017]; eKLR.**

2. The applicant herein had been charged with three counts of robbery with violence contrary to **Section 296(2)** of the **Penal Code**. The particulars were that on 12th May, 2009 at Kiracha Trading Centre Magumoni jointly with others not before court while armed with rifles and pangas robbed Alex Rugendo of motor vehicle Registration KAL 919 P, a mobile phone and two suits all valued at Kshs.2,008,500/- and at the time of the said robbery stabbed the said Alex Rugendo twice on his stomach. In the 2nd count, the particulars were that on the same date and place the applicant also robbed Silas Mugendi Paskwale two mobile phones and his wallet containing 2000 all valued at Kshs12,500 and at the time of the said robbery stabbed Silas Rugendo Paskwale on the right thigh. In the last count (count 3), the applicant together with others not before court while armed robbed Justine Njagi Rugendo of his mobile phone Nokia 635 valued at Kshs.9,500/- and at the time of the robbery used actual violence on the said Justin Njagi Rugendo. The applicant denied all the counts present through **Chuka Principal Magistrate's Court Criminal Case No.635/2009** but after trial he was convicted of all the counts but sentenced to death in the first count and in view of the nature of the sentence, the sentence in count 2 and 3 was left in abeyance.

3. The applicant has moved this court to review his sentences stating that his mitigation was not considered in view of the mandatory nature of the sentence and that in view of the decision of the Supreme Court, the trial court's hands should not have been tied by the mandatory nature of the sentence. He has asked this court to review the sentence with a view to imposing an appropriate sentence noting that he has spent 10 years in prison.

4. I have considered this application in light of the supreme court decision and though the trial court did not consider as a mitigating factor the fact that the applicant was a first offender, I note from the record of proceedings the nature and extent of extreme violence meted out against the victims of the crime committed by the applicant. A deterrent sentence was necessary but in view of the **Muratetu's case** I exercise my discretion in setting aside the sentence of death and in its place impose an imprisonment of 30 years in count 1 and 2 and in count 3 he shall serve a sentence of 20 years. The two sentences shall run concurrently.

Dated, signed and delivered at Chuka this 5th November, 2018.

R.K. LIMO

JUDGE

5/11/2018

Ruling is dated, signed and delivered in the open court in presence of the applicant in person and Machirah for Respondent/State.

R.K. LIMO

JUDGE

5/11/2018