



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CONS. PETITION NO. 66 OF 2014

IN THE MATTER OF ARTICLES 22(1) (2) (B) 21 (1)(2) (2) (4) (A) OF THE CONSTITUTION OF KENYA 2010

IN THE MATTER CONTROVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 25 (a) (c) 26 (1) 27 (1) (2) 28 29 (a) (s) (f) 48 AND ARTICLES 50(1) (2) (H) (P) 6(a) (b) OF THE CONSTITUTION OF KENYA.

AND

ARTICLES 23(1) (1) AS READ WITH ARTICLES 165 OF THE PENAL CODE WHICH HAVE BEEN

DECLARED UNCONSTITUTIONAL BY THE SUPREME COURT OF KENYA ON 14TH DAY OF DECEMBER 2017

DENNIS KEIRE OSORO.....PETITIONER

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Petitioner was charged with Robbery with violence and sentenced to death. His appeal before the High Court and the Court of Appeal were not successful. The Supreme Court in **Francis Karioko Muruatetu & Another vs Republic SCK Pet.15 of 2015 [2017] Eklr** held that the death sentence is unconstitutional. The petitioner seeks re-sentencing.

2. The Supreme Court in Muruatetu Case (Supra at para. 71), considered that in re-sentencing in a case of murder, the following mitigating factors would be applicable;

- (a) age of the offender;
- (b) being a first offender;
- (c) whether the offender pleaded guilty;
- (d) character and record of the offender;
- (e) commission of the offence in response to gender-based violence;
- (f) remorsefulness of the offender;
- (g) the possibility of reform and social re-adaptation of the offender;
- (h) any other factor that the Court considers relevant.

3. The petitioner was convicted of the offence of robbery with violence contrary to section 296(2). I have considered the circumstance of the case. The petitioner was a first offender. The petitioner remained in pre-trial custody from 2007 to December 2008. Whilst sentencing the petitioner I have to take into account the period spent in pre-trial custody by dint of the proviso to section 333(2) of the Criminal Procedure Code (Chapter 75 of the Laws of Kenya). I have also considered the report from prison which states that he had demonstrated exemplary behavior and that he is currently in charge of all convicted prisoners a task he has performed to the satisfaction of both inmates and the entire staff of Kisii main prison. That he is well reformed and a role model to other reforming inmates.

4. 10. Considering the entirety of the facts, I re-sentence the petitioner to 15 years' imprisonment commencing the date of sentencing before the trial court that is from 16th December 2008.

Dated, signed and delivered this 11th day of December 2018.

R.E. OUGO

JUDGE

In the presence of

Appellant In person

Mr. Otieno Senior Prosecution Counsel

Ms. Rael Court Clerk