

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CONSTITUTION PETITION NO. 42 OF 2019

GEORGE MARWA CHACHAAPPLICANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

1. This is a judgment on an application for revision of the sentence of death imposed upon the petitioner/applicant in Kisii HCCR No. 43 of 2005. **GEORGE MARWA CHACHA** the applicant herein has filed the petition seeking that he be re-sentenced. He contends that the mandatory death sentence imposed on him was excessive, arbitrary and inhuman.

2. Mr. Otieno for the State supported the application. He submitted that based on the Supreme Court decision on the matter the court could exercise its jurisdiction and resentence.

3. The Supreme Court decision referred to by the learned counsel is the case of *Francis Karioko Muratetu & Another v Republic Petition No. 15 & 16 of 2015 [2017]eKLR*. In that matter, the Apex Court held that the mandatory death penalty was arbitrary and unconstitutional as it did not take into consideration mitigation and varying degrees of gravity and culpability.

4. In a judgment dated 24th January 2012, this court differently constituted found that the petitioner had murdered the deceased, who was 8 years old, in broad daylight by shooting him with an arrow fatally wounding him. The applicant told the court that he was 50 years and had been in prison since 2005. He had filed Criminal Appeal No. 218 of 2018 before the Court of Appeal in Kisumu but later withdrew it.

5. **Section 333 (1) & (2)** of the **Criminal Procedure Code** provides that where a person is convicted, any period spent in custody prior to sentencing shall be taken into consideration. I have considered the period the petitioner has been in jail. He was charged on 22nd July 2005. He was sentenced by the High Court on 24th January 2012. He was in custody for more than 6 years before he was sentenced. Considering the circumstances of the case, the fact that a life was lost, the period he has served and the fact that the applicant was a first offender, I set aside the death sentence and sentence **GEORGE MARWA CHACHA** to a period of **25 years' imprisonment** to run from 22nd July 2005.

Dated, signed and delivered at KISII this 17th day of December 2020.

R.E OUGO

JUDGE

In the Presence of;

Petitioner Present

Mr. Otieno Senior Prosecution Counsel Office of the DPP

Ms. Rael Court Assistant