



**Muthee v Republic (Criminal Appeal 101 of 2023)
[2023] KEHC 26986 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26986 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 101 OF 2023
DR KAVEDZA, J
DECEMBER 20, 2023**

BETWEEN

ROBERT NJUGUNA MUTHEE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before me is an application by the applicant, Robert Njuguna, seeking revision of the sentence which he is currently serving. The applicant was charged, convicted and sentenced to death on two counts of robbery with violence contrary to section 296(2) of the *Penal Code*. Aggrieved by the sentence and conviction, the applicant filed High Court Criminal Appeal No. 226 of 2005 wherein both the conviction and sentence of the trial court were upheld.
2. The Applicant subsequently filed an appeal to the Court of Appeal being No. 114 of 2007 wherein the finding of the trial court was similarly upheld on 18th December 2014. Pursuant to the Supreme Court decision of *Francis Karioko Muruatetu & another vs Republic [2017]* eKLR he was re-sentenced by the trial court on 19th March 2019 to serve life imprisonment.
3. Being aggrieved, he filed an application in High Court Misc. Criminal application no. 1 of 2019 seeking rehearing of the re-sentencing application. On 30th November 2019, Hon. Lesiit J (as she then was) struck out the application for being incompetent.
4. Pursuant to the various judicial pronouncements on the unconstitutionality of the sentence of life imprisonment, the applicant sought re-sentencing.
5. I have considered the application, oral arguments made by the parties pursuant to the application before court, the applicable law and the emerging jurisprudence from our courts.



6. It is trite that although sentencing is at the discretion of the trial court, that discretion must be exercised judiciously in accordance with the law taking into account the facts and circumstances of each case. Although sentences are intended, inter alia, to punish an offender for his wrongdoing, they also aim to rehabilitate offenders to renounce their criminal tendencies and become law-abiding citizens.
7. In this case, the appellant was re-sentenced to serve life imprisonment. The Court of Appeal sitting in Kisumu in *Criminal Appeal no. 22 of 2018 Evans Nyamari Ayako vs Republic* held that life imprisonment in Kenya does not mean the natural life of the convict but translates to thirty years' imprisonment. Similarly, mandatory minimum sentences were declared unconstitutional (See Court of Appeal in *Joshua Gichuki Mwangi vs Republic [2015]* eKLR).
8. In *Isaac Kimanzi Musee & 2 others vs Republic [2019]* eKLR the Court suggested that in the spirit of uniformity and fairness, emerging jurisprudence support the view that in sentence re-hearing in robbery with violence cases, the starting point should be 14 years. This is informed by the fact that the felony of robbery, which is a lesser offence than robbery with violence, attracts a term of imprisonment of 14 years.
9. In this case the applicant herein have been in custody since 2003 which is 20 twenty years imprisonment. At the time of his sentence, he was a first offender. I find it prudent to therefore set aside the sentence of life imprisonment. I am bound by this decision and I find that the life imprisonment meted upon the applicant was excessive.
10. Taking all factors into account, I find a jail term of 30 years to be most appropriate in the circumstances. I therefore set aside the sentence of life imprisonment imposed on the applicant and substitute it was a sentence of 30 years imprisonment with effect from the date arrest being 18th November 2003.

It is so ordered.

RULING DATED AND DELIVERED VIRTUALLY THIS 20TH DAY OF DECEMBER 2023.

D. KAVEDZA

JUDGE

In the presence of:

Mr. Otieno for the State

Applicant present on the platform

Joy Court Assistant

