



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

CRIMINAL APPEAL NO. 8 OF 2018

WILLY WAFULA WANJALA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the judgement and sentence of Hon. D.O. Onyango, SPM, dated 15th January, 2018 in the SPM's Court at Kimilili, in Criminal No.105 of 2016, Republic vs Willy Wafula Wanjala and David Wekesa Wamukota)

JUDGEMENT

In his amended petition of appeal which bears the court registry stamp of 29th July 2021, the appellant has appealed against his sentence of thirty (30) years imprisonment in respect of the offences of robbery with violence contrary to section 296 (2) of the Penal Code (Cap 63) Laws of Kenya.

In this court the appellant has raised nine grounds of appeal in his petition of appeal.

In ground 1 the appellant has faulted the trial magistrate for sentencing him without taking into account the period he had been in pre-trial custody. The appellant was arrested on 12th January 2016 and was taken to court on 20/1/2016.

The appellant was convicted on six counts of capital robbery and was sentenced to 30 years imprisonment on each count. The sentences were ordered to run concurrently.

In sentencing the appellant, the trial magistrate did not take into account the appellant had been in pre-custody that is from 12th January 2016 to the date he was sentenced; which was on 15/1/2018. This worked out to a period of about three years. I find that the failure to take into account that period was a violation of the mandatory requirement of section 333 (2) of the Criminal Procedure Code (Cap 75) Laws of Kenya. I find that ground 1 succeeds and I hereby uphold it.

In grounds 2, the appellant has pleaded for mercy and leniency; which is then followed by ground 3 in which he has pleaded for leniency since he has a child of tender years.

In the rest of the grounds the appellant has in effect offered his mitigation which is as follows. He was a first offender. He is remorseful and repentant. He has now reformed.

Mr. Oyiembo for the Respondent supported the sentence and submitted that it was lenient.

I have considered the mitigation of the appellant and the opposition to it by counsel for the Respondent.

I find that the circumstances in which the offences were committed were serious. Six victims were robbed at that time and one of the victims was raped and the money taken from them was not recovered.

In the circumstances I find that the appellant is only entitled to the reduction of the sentence for the period he was in pre-trial sentence which is three years plus the imprisonment period from 15/1/2018 to date which works out to three years.

It therefore follows that the appellant has now been in both pre-trial custody and imprisonment custody for a period of about six (6) years.

The appellant's appeal succeeds with the result that he will now serve 24 years which will sentence will begin to run from the date of this

judgement.

Judgement dated, signed and delivered in open court at Nairobi through video conference this 25th day of January 2022.

J M BWONWONGA

JUDGE

In the presence of: -

Mr. Kinyua: Court Assistant

The appellant

Ms Mukangu for the Respondent