



**Ombima alias ‘Sweetie v Republic (Criminal Petition E010 of 2021)
[2022] KEHC 14441 (KLR) (27 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14441 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL PETITION E010 OF 2021
RE ABURILI, J
OCTOBER 27, 2022**

BETWEEN

DAVID OMBIMA ALIAS ‘SWEETIE’ PETITIONER

AND

REPUBLIC RESPONDENT

*(Petition for Resentencing in Kisumu PM Criminal Case No. 662
of 2007 AND in Kisumu Criminal Appeal No. 30/2009 AND
Criminal Appeal No. 167 of 2010 in the Court of Appeal at Kisumu)*

JUDGMENT

1. The Petitioner herein David Ombima alias ‘Sweetie’ was convicted and sentenced to death for the offence of Robbery with Violence Contrary to Section 296 (2) of the Penal Code vide Maseno PM Cr. Case No. 662/2007 upon arrest on 24/6/2007.
2. The complainant was Ibrahim Amioko Otwoma whose property namely 2 phones Make Samsung, a DVD player (Royal) Deck, DVD surrounding Amplifier, 30 CD discs player, cash Kshs. 20,000/= all valued at Kshs. 70,000/- and that actual violence was used on the complainant. The Petitioner was in the company of 4 others and were all armed with offensive weapons namely, pangas and rungus when they violently robbed the complainant on 11/5/2007 at Depo Market, Ekwanda Sub-location, South Bunyore Location, Emuhaya District within Western Province.
3. The Petitioner’s appeal to the High court was heard and dismissed by a 2 Judge Bench comprising Abida Aroni Ali J and J.R Karanja, J vide judgment delivered in Kisumu HCRA 60/2009 on 18/5/2010.
4. A further appeal to the Court of Appeal was not successful. The Court of Appeal dismissed the appeal vide Judgment in CRA 167/2010 Kisumu, Court of Appeal delivered on 23/10/2014.



5. The Petitioner is now before this court vide this petition seeking for resentencing and that the court do consider Section 333(2) of the Criminal Procedure Code on the period he spent in custody before being sentenced.
6. The Petitioner filed this petition on 19/1/2021 together with his submissions which give mathematical figures to this court. The Respondent has also find written submissions on 12/11/2021 to the effect that the Respondent's sentence has already been reviewed to life sentence hence this petition is an abuse of the court process. Further, the Respondent contends that the sentence meted out was lenient and sufficient, considering the circumstances of the case, that the Francis Muruatetu (II) case of 6/7/2021 was clear that the constitutional validity of mandatory death sentences only applied to murder cases, and not all other cases where mandatory minimum sentences are concerned; that Robbery with Violence does not fall under the Francis Muruatetu case and that there is no document showing remorse to inform this court to reduce the sentence.
7. The petitioner claims that he has been in prison since 2007, that he is now 44 years old, a productive age and had parents, who have since died. That his family needs him, that his nephews and nieces who are orphaned dropped out of school due to poverty and are destitutes.
8. That he is remorseful, that in prison he relates well with fellow inmates and has not had any disciplinary issue in prison. That he has undergone several spiritual trainings and vocational trainings which have rehabilitated him and equipped him with skills to work and generate income for basic needs. That he is trained in carpentry and joinery grade three (3) and was continuing save for the interruption by covid -19.
9. That he has served 12 years in prison and that in Petition 9 of 2019, he got remission of 1/3 of his sentence. He annexed copies of certificates for the skills acquired while in prison.
10. Before I delve into the merits of the Petition, I observe that on 24/2/2022, J. Kamau J had dealt with this matter and made a determination in a judgment, in the line with the Court of Appeal decision, and observed that Ochieng, J had made a determination in Petition No. 9/2019 which the learned Judge had not seen and neither have I seen it as the Petitioner has not even availed copy of the judgment or ruling from that petition wherein he claims that his sentence was reviewed, taking into account Section 333(2) of the Criminal Procedure Code. If that be the case, then it is obvious that the petitioner is playing games with mathematical calculations before this court which has exhausted its jurisdiction and discretion. I find no merit in this petition which is hereby dismissed and this file is hereby closed.
11. Let the petitioner serve the reviewed sentence in Petition 9/2019 and complete.
12. I so order. File closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 27TH DAY OF OCTOBER, 2022

R.E. ABURILI
JUDGE

