



REPUBLIC OF KENYA



**KENYA LAW**  
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**CMK v Republic (Criminal Appeal E010 of 2022)  
[2022] KEHC 15854 (KLR) (29 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15854 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CRIMINAL APPEAL E010 OF 2022  
GMA DULU, J  
NOVEMBER 29, 2022**

**BETWEEN**

**CMK ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the original judgment of Hon. B. N. Ireri in Makindu Principal Magistrate's Court PM Criminal Case No.336 of 2020 pronounced on 11th December 2020)*

**JUDGMENT**

1. The appellant was charged in the magistrate's court with two others with robbery with violence contrary to section 296(2) of the *Penal Code*. The particulars of offence were that on May 1, 2020 at Baroon Center Lodging at Emali in Nzau Sub-County within Makueni County jointly with others not before court robbed Nkaitole Ngaur his money Kshs 206,800/= and at the time of such robbery wounded the said Nkaitole Ngaur.
2. There were other five (5) counts to which she is recorded to have pleaded guilty, but was convicted of only the charge of robbery with violence contrary to section 296(2) of the *Penal Code* and sentenced to 20 years imprisonment.
3. She has now come to this court on appeal on sentence only, on the following grounds—
  1. That the sentence meted by the trial court was harsh and excessive.
  2. That she is deeply sorry, remorseful and regret everything that happened.
  3. That she is a first offender, has not committed another offence.
  4. That she pleaded guilty to the charges and accepted responsibility for her actions.



5. That she is 22 years old, energetic and plead with the court to be given a second chance by granting her a more lenient sentence.
4. The appeal was canvassed through written submissions. I have perused and considered the submissions filed by the appellant as well as the submissions filed by the Director of Public Prosecutions. I note that the Director of Public Prosecutions has left it upon this court to determine the appropriate sentence.
5. The statutory sentence for the offence of robbery with violence is death, sentence but the trial magistrate, used the reasoning in the Supreme Court case of *Francis Muruatetu –vs- Republic* (2017) e KLR and meted out a lesser sentence.
6. Indeed, the appellant is a first offender. She is fairly young at 22 years of age. The pre-sentence report availed to the trial magistrate, was non-committal on the type of sentence to be imposed, but noted that the (accused) appellant was a young commercial sex worker, with a young child, who was one year old. It was also indicated in the report that the complainant stated that he knew the appellant well and only wanted to be paid his money.
7. In my view, from the facts given by the prosecutor, before the trial court, the offence should probably have been reduced by the prosecution to simple robbery, as this was an incident where a commercial sex worker was assisted by others to take money from her client, without his consent.
8. I thus do not fault the magistrate for imposing a prison sentence and rather than the death penalty.
9. Coming to the appeal herein on sentence, though the appellant pleaded guilty to the offence, was a first offender, and fairly young person with an infant child, the bigger amount of money stolen from the complainant has not been recovered to date. Considering however, the circumstances of this case, where the appellant is exceedingly remorseful and pleaded guilty to the charge in no uncertain terms, I will interfere with the discretion of the trial court in sentencing, and reduce the sentence imposed to six (6) years imprisonment.
10. Consequently, I allow the appeal on sentence, set aside the sentence imposed by the trial court and order that instead the appellant will serve six (6) years imprisonment from the date she was sentenced by the trial court. She is warned however, to avoid repeating similar offences.

**DELIVERED, SIGNED & DATED THIS 29<sup>TH</sup> DAY OF NOVEMBER 2022, IN OPEN COURT AT MAKUENI.**

.....

**GEORGE DULU**

**JUDGE**

