



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 95 OF 2019

DZOMBO JABU KADZOYE.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein DZOMBO JABU KADZOYE was charged with the Offence of Robbery with Violence contrary to 296 (2) of the Penal Code, and count two of being in possession of uniforms without authority contrary to Section 184 (3) of the Penal Code.
2. He was sentenced to death. His appeal to the High Court was dismissed. The death sentence was later commuted to life imprisonment.
3. The Petitioner is now in this court pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Another v Republic [2017] eKLR** in which the apex Court found the mandatory nature of the death sentence to be unconstitutional.
4. When the matter came for resentencing, Ms. Anyumba learned counsel appeared for the State. Counsel submitted that the Petitioner was armed with a knife that is considered a dangerous weapon. Counsel submitted that the petitioner used the knife to inflict severe injuries on the victims to wit cut wounds. Counsel prayed for a definite sentence of 30 years imprisonment.
5. The Petitioner on his part submitted that his matter has taken two years for his appeal to be heard as directed by the Supreme Court. He urged this court to intervene. He submitted that he has been in jail for 14 years. He acknowledged that he used a panga but did not injure anybody. He stated that he has reformed and prayed to be jailed for 15 years.
6. I have considered the Petition and the submissions. The only issue for determination is the length of the imprisonment. The Court of Appeal in **William Okungu Kittiny –Vs- Republic (2018) eKLR** held that:-

“...the sentence of death under Section 296 (2) and Section 297 (2) of the Penal Code is discretionary maximum punishment. To the extent that Section 296 (2) and 297 (2) of the Penal Code provides for mandatory death sentence the Sections are inconsistent with Constitution.”

7. The Court of Appeal in **Thomas Mwambu Wenyi v Republic [2017] eKLR** cited the decision of the Supreme Court of India in **Alister Anthony Pereira v State of Maharashtra at paragraph 70-71** where the court held the following on sentencing: -

“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”

8. In **Douglas Muthaura Ntoribi v Republic, Meru High Court, Misc. Criminal Appeal No. 4 of 2015** the robbers while armed with a panga stole Ksh. 500/= from the victim and occasioned him minor injuries. Chitembwe J. substituted the death sentence with a prison term of 5 years.

9. In this case the Petitioner has transformed and is remorseful. The Prosecution counsel pointed out the aggravating factors to be the use of dangerous and offensive weapons in the form of knife which inflicted a cut wound on two victims.

10. The Petitioner has already served 14 years in prison. In my consideration of the aggravating factors and the mitigating factors, the Petitioner has spent sufficient time in prison. I therefore sentence the Petitioner to the time served. Therefore, the petitioner is hereby set at liberty, and forthwith released from prison unless he is otherwise lawfully held.

Dated, Signed and Delivered at Mombasa this 22nd day of March, 2021.

E. K. OGOLA

JUDGE

Judgment delivered via MS Teams in the presence of:

Petitioner in person

Ms. Anyumba for the DPP

Ms. Peris Court Assistant