



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 226 OF 2019

ALI ABDALLA MWANZA.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein Ali Abdalla Mwanza was convicted for the offence of murder by the High Court in HC Criminal Case No. 53 of 2009, Mombasa and was sentenced to serve 40 years in prison.

2. He appealed on sentence, and the Court of Appeal, after reviewing his case reduced the sentence to 20 years. The Court stated as follows:

“In this case it is obvious to us if the Appellant were to serve the entire 40 years sentence with the above life expectancy of about 67 years, the sentence would go beyond the life expectancy and in that case it would appear manifestly excessive. We say so because the Judge did not impose a death sentence or even a life sentence. It is for the aforesaid reasons that we are of the view that if the trial Judge had taken the above matters into consideration, perhaps she would have considered a lesser term than 40 years. In the circumstances we partially allow the appeal and substitute the sentence of 40 years with a term of 20 years from the date of conviction.”

3. His sentence having been reduced from 40 years to 20 years, the Petitioner is now back in this Court seeking to have the reduced sentence run from the date of arrest.

4. Under Section 333(2) of the Criminal Procedure Code, the Petitioner is entitled to have time spent in remand to be considered in sentencing. The issue now is whether or not the sentence applies in this matter after the Court of Appeal reviewed the sentence and reduced it from 40 to 20 years.

5. **Mr. Fedha**, learned prosecutor submitted that the Court of Appeal had already considered the period the Petitioner spent in remand when they reviewed the sentence.

6. The Petitioner on his part submitted that the Court of Appeal did not consider the period spent in remand.

7. In my view, the Court of Appeal did not just arbitrarily reduce the sentence. A reading of the relevant part of the Judgment reveals that the issue occupied the minds of the judges. The Court stated as follows in paragraph 13:

“13. Following the above guidelines and considering the circumstances of the matter which is really the guiding principle in sentencing, we ask ourselves whether the sentence of 40 years is manifestly excessive bearing in mind the age of the Appellant at the time of conviction. We also recognize that the length of the period of imprisonment imposed on the Appellant had a bearing to the gravity of the offence where a life was lost due to the Appellant’s recklessness and failure to consider that even if the deceased was suspected of stealing, he had no reason to take the law into his own hands and commandeer others to take away a life in the most painful and undignified manner the way the deceased died.

14. In considering whether the sentence of 40 years was manifestly excessive, we have taken note of the latest health profile for Kenya compiled by the World Health Organization (WHO) data for 2018, on life expectancy which is indicated as 64.4 for male and 68.9 for females and total life expectancy average as 66.7. Of course if one went to the specifics of the causes of death in Kenya, a fair percentage would be due to murders and other homicides but that is perhaps not for us to determine in

this appeal although it has a bearing in considering sentencing as a deterrent. It is also trite that every case of sentencing should strictly be considered on its own circumstances as no one individual should be sent to prison purely to send a message to other would be offenders.”

8. The Court of Appeal reviewed the sentencing principles and taking everything into consideration reduced the sentence from 40 years to 20 years. I believe that in that review the Court of Appeal had in mind the time the Petitioner had served in remand, if any, and the fact that there was a review of sentence and a reduction of the same by 20 years is a clear indication that the Judges of the Court of Appeal wanted the reduced sentence of 20 years to commence from the date of conviction.

9. In my view therefore, the current petition lacks merit and the same is herewith dismissed.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 27TH DAY OF MAY, 2021.

E. K. OGOLA

JUDGE

Judgment delivered via MS Teams in the presence of:

Petitioner in person

Ms. Wanjohi for DPP

Ms. Peris Court Assistant