

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO 189 OF 2019

KENNNEDY KAVAI ABDALLA.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGEMENT ON RESENTENCING

1. **Kennedy Kawai Abdalla** the Petitioner herein was charged with the offence of robbery with violence contrary to Section 296(2) of the Penal Code and sentenced to death. The Petitioner consequently filed an appeal vide Mombasa High Court Criminal Appeal No 144 of 1997 which was dismissed on 16th February 1999. His appeal to Court of Appeal in Mombasa Criminal Appeal No 42 of 1999 was dismissed on 27th July 1999. The Petitioner is now before this court for resentencing based on the decision of the Supreme Court in **Francis Karioko Muruatetu & Another v Republic [2017] eKLR**.

2. This matter came up before court on 29/4/2021 when Ms. Wanjohi for the Respondent stated that the Respondent would rely on the submissions filed before this court on 21/4/2021. A similar position was taken by the Petitioner who gave oral submissions further to the ones filed in court on 14/1/2021. The Petitioner stated that he had been in jail for 26 years since 1996 and that no injuries had been inflicted on the victim at the time of committing the offence.

3. In his written submissions the Petitioner stated that the punishment meted against him had been excessive and did not serve the interest of justice. Reliance was placed on the case of **Gaston January Stephen v Republic** and in **Yussuf Dahar Arog v Republic HCCR App. No. 110 of 2006** where the principles and purpose of sentencing were stated. He stated that was a first time offender and in his youthful age at the time of committing the offence and that he had benefitted from the prison rehabilitation programme. He placed reliance on **Mulamba Ali Mulamba v Republic Cr. Appl. No. 12/2013**. He prayed for the petition to be allowed and for a definite sentence to be imposed with a consideration of the time already served.

4. The Respondent on the other hand submitted that the aggravating circumstances of the offence committed by the Petitioner outweighed the mitigating circumstances in this case. That the offence committed was heinous and had left the victim with physical and psychological injuries. That for the interest of justice a deterrent sentence be meted upon the Petitioner to prevent future commission of such offences. The Respondent prayed for a 30-year sentence including the time served.

5. This Court has considered the submissions. The Petitioner was found in possession of stolen items of the victims 5 days after the robbery. The items included air tickets, passports and identification papers belonging to PW1. He was also in possession of Italian currency with no viable explanation on how he owned the same and he further led the police to the place where the G3 rifle used in the robbery was hidden.

6. However, of material significance to this case is that it is based on the finding of the Muruatetu case. However, the Supreme Court in the directions issued on 6/7/2021 clarified that the celebrated Muruatetu case was only limited to murder offenders, and that robbery with violence and other offenders were not to benefit therefrom. This direction automatically divests this Court the jurisdiction to resentence the Petitioner herein. The petition is dismissed.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 29TH DAY OF JULY, 2021.

E. K. OGOLA

JUDGE

Judgement delivered via MS Teams in the presence of:

Petitioner in person

Ms. Wanjohi for DPP

Ms. Peris Court Assistant