

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL APPEAL NO 206 OF 2005

PETER MWANGI NJOROGE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING AND RE-SENTENCING

(DONE AT THE HIGH COURT, NANYUKI)

1. The Appellant herein, **PETER MWANGI NJOROGE**, was convicted of one count of **robbery with violence** contrary to **section 296(2)** of the **Penal Code** and was sentenced to death as by law then provided. His first appeal to this court at Nyeri against the conviction and sentence was dismissed in a judgment dated and delivered on 29/05/2008 (Kasango & Makhandia, JJ). He told this court that he never lodged a second appeal to the **Court of Appeal**. In the meantime his sentence of death had been commuted to life imprisonment by executive clemency.

2. The Appellant subsequently applied to this court vide **Nanyuki HC Misc Criminal Application No 16 of 2019** for re-sentencing. The application was made upon strength of the decision of the **Supreme Court of Kenya** in **Petitions Nos 15 & 16 of 2015 (Consolidated), Francis Karioko Muruatetu & Another –vs- Republic & Others (2017) eKLR**. In its judgment dated and delivered on 14/12/2017, that apex court declared as unconstitutional the mandatory nature of the death sentence as provided for under section 204 of the Penal Code for the offence of murder contrary to section 203 of the same Code. The court remitted the matter back to the **High Court** (the trial court) for re-hearing on sentence only. The court also stated, for avoidance of doubt, that its declaration did not disturb the validity of the death sentence as contemplated under **Article 26(3)** of the **Constitution of Kenya, 2010**.

3. By parity of reasoning, the above stated declaration of the **Supreme Court** in regard to the mandatory nature of the death sentence under section 204 of the Penal Code no doubt applies in equal measure to the mandatory nature of the death sentence under section 296(2) of the Penal Code.

4. The High Court in its criminal appellate jurisdiction (as the first appellate court) has the same sentencing powers as the trial court. See **Section 354** of the **Criminal Procedure Code, Cap 75**. I therefore considered it more expedient that this court re-sentences the Appellant rather than remit the matter to the trial court. This would save on time and possibly prevent the mischief of multiple applications.

5. I have considered the submissions of the Appellant as well as those of the learned prosecution counsel. I have also considered the re-sentencing report dated 13th and filed on 14th November 2019. Lastly, I have considered the circumstances in which the robbery was committed.

6. The Appellant, according to the charge sheet, was alone when he committed the offence. The offence was in broad daylight in the middle of **Nanyuki Town**. He was armed with a rungu, with which he threatened violence, though no one was injured. The items stolen in the robbery amounted to KShs 5,706/00 in value. They were all recovered as the Appellant was chased and apprehended immediately after the robbery.

7. The Appellant was a young man of about 25 years when he was sentenced on 21/07/2005. He had not yet married.

8. In all the above circumstances, I consider that the sentence of death meted out to the Appellant was inappropriate and certainly manifestly harsh and excessive. He was a first offender; everyone deserves a second chance. An appropriate term of imprisonment would have served the ends of justice in this case. The Appellant has now been in prison for about fourteen (14) years six (6) months.

9. I will set aside the sentence of death imposed upon the Appellant and substitute therefor a term of imprisonment for fifteen (15) years effective from 21st July 2005. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 17TH DAY OF JANUARY 2020

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 30TH DAY OF JANUARY 2020