



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL APPEAL NO. 87 OF 2017

HUMPHREY OTIENO OCHIENG.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(Being an appeal against sentence conviction from the judgment in the Principal Magistrate's Court at Ukwala in Criminal Case No. 355 of 2016 dated 12.9.2017 by Hon G. Adhiambo Senior Resident Magistrate).

RULING ON RESENTENCING

1. The Probation Report filed on 23.1.2020 is now available. I shall therefore proceed to consider the aspect of sentencing for the Appellant.
2. On 2.10.2019, this Court delivered judgment in this appeal, dismissing the Appellant's appeal against conviction and upholding the conviction by the trial Court for the offence of Robbery with **Violence Contrary Section 296(2) of the Penal Code**.
3. On Sentence, the Court ordered for a Presentencing Report to be filed by the Siaya County Probation Officer on the Appellant's antecedents.
4. However, it has taken some time before the said report was availed to Court. The first report was rejected by this Court as it appeared skewed asking the Court to pardon the Appellant who never admitted committing the offence.
5. The Second report missed out on the Appellant's own attitude which has now been included in the report filed on 23.1.2020. I have considered the Probation Officer's Report. I have also considered the fact that the Appellant shows no remorse for the heinous offence and he maintains his innocence to the effect that he is a victim of unfair criminal proceedings.
6. I have considered the seriousness of the offence and the fact that the Appellant who was a Prison's Officer abused the trust bestowed on him as a firearm holder, to use it to commit heinous crimes.
7. I have equally considered the fact that the Appellant was sentenced to serve life in prison, on both Counts of Robbery with Violence and the fact that albeit the mandatory sentence is death as at the time of such sentencing on 12.9.2017, before the decision in **Francis Karioko Muruatetu v Republic [2017] e KLR** was delivered by the Supreme Court in Supreme Court Petition No. 15 and 16 of 2015.
8. I have also considered the fact that the Appellant, according to the trial Court record, was a first offender but in mitigation he stated that he was framed up and left it to the Court to make its decision.
9. The object of a sentence is, primarily, to punish for an offence and to reform the accused in such manner as to, as appropriate in the circumstances of the case, deter the repetition of the offence by the accused and others taking into account the moral blame-worthiness of the accused, the prevalence of the crime and the situation of the accused himself.
10. In **Gerald Ndoho Munjuga vs. Republic (2016) eKLR** the High Court on appeal cited with approval the Supreme of India in the **State M.P. vs. Bablu Natt** where the court held:

“Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of an appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is done. There is no straightjacket formula for sentencing an accused on proof of crime. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances”.

11. Thus, the principle governing imposition of punishment would depend upon the facts and circumstances of each case. In addition, in exercising its discretion in sentencing, the Court is called upon to take into consideration principles of proportionality, deterrence and rehabilitation and as part of the proportionality, analysis, mitigating and aggravating factors should also be considered.

12. In this case, I have noted that the complainants did not sustain serious injuries as a result of the Robbery orchestrated by the Appellant and the fact that some of the items subject of the two counts of robbery with violence were recovered apart from cash. Robbery with violence is however a heinous crime motivated by greed and often times the victims of the robbery succumb or are left without limbs. Deterrent sentence is therefore called for.

13. I have considered all the above, and the fact that sentencing is a judicial discretion of the trial Courts, and that unless there is some irregularity in such sentencing, this Court should be slow in interfering with such sentence.

14. Accordingly, I hereby exercise discretion and resentence the Appellant. I set aside the life imprisonment imposed on the Appellant and substitute it with a prison term of thirty (30) years to run concurrently on both counts, to be calculated from the date of sentencing in the trial Court.

15. Right of Appeal 7 days.

16. Orders accordingly.

Dated, Signed and Delivered at Siaya this 28th day of January, 2020

R.E. ABURILI

JUDGE

In the presence of:

Mr. Ochanyo Counsel for the Appellant

Appellant

Mr. Okachi Senior Principal Prosecution Counsel for the Respondent

CA: Brenda and Modestar