



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CONSTITUTIONAL PETITION NO. 60 OF 2019

(CORAM: R. E. ABURILI - J.)

AGGREY OTIENO OYUGA.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

(Being a Petition for resentencing against conviction and sentence in Siaya Principal Magistrate's court

in Criminal Case No. 525 of 2011 before Hon. R.B. Ngetich, SPM; Kisumu HC CRA No. 134 of 2012

and Kisumu Court of Appeal CRA No. 10 of 2014)

JUDGMENT

1. The Petitioner was convicted of the offence of robbery with violence and sentenced to suffer death by Hon. R.N. Ngetich SPM (as she then was on 19/12/2012 vide Siaya P, Cr. Case NO. 525/2011.
2. He appealed to the High Court at Kisumu vide HCRA 134/2012 which appeal was dismissed and he appealed further to the Court of Appeal vide CA CRA 10/2014 which appeal was dismissed on 27/5/2016.
3. The Petitioner seeks for resentencing vide this petition as he was handed maximum mandatory death penalty which was commuted to life imprisonment. This is pursuant to the ***Francis Muruatetu decision SC Pet. No. 15 & 16 / 2014.***
4. The Petitioner submits that he regrets the offence, prays for leniency and that he has reformed. Certificates shown to the court show that he has trained in Theology at Discovery Bible School and has a Certificate in Health Education and Counselling having trained in Mind Education Training. He has served about 10 years in prison.
5. The State acknowledges that the Petitioner has reformed and that he can be given an opportunity to serve custodial sentence, but that the offence is heinous requiring deterrent sentence.
6. I have considered the petition, submission, testimonials and response by the State. I have also considered circumstances under which the offence was committed, the value of the property stolen and the nature of injuries sustained by the complainant. I have given equal consideration to the mitigation by the Petitioner.
7. The offence of robbery with violence is prompted by greed, reaping when one has not sown and in the process threatening life and limb. It is a heinous crime.
8. However, the Petitioner has shown remorse and reform. He is rehabilitated through life's skills learnt in prison as shown by certificates filed in court.
9. I am in the circumstances satisfied that the Petitioner who readily accepts his mistakes and admits the offence and promises not to reoffend, deserves a chance back into the society.
10. Accordingly, I allow the petition for resentencing and vacate the mandatory death sentence as commuted to life imprisonment and substitute it with a prison term of ten years to be calculated from the date of his conviction and sentence on 19.12.2012.

11. Orders accordingly.

Dated, Signed and Delivered at SIAYA this 27th Day of January 2020

R.E. ABURILI

JUDGE

In the presence of:

Mr. Okachi Prosecution Counsel for the State

The Petitioner Aggrey Otieno Oyuga in person

Court Assistant: Brenda and Modestar