



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CRIMINAL APPEAL NO. 20 OF 2018**

**MAURICE AMULIESE MUTAMBI..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*(from the original conviction and sentence by C. C. Kipkorir, SRM, in Mumias SPMC Criminal Case No. 1147 of 2016 dated 12/2/2018)*

**SENTENCE**

1. By a judgment of this court delivered on 17<sup>th</sup> October, 2019, the court upheld the conviction of the appellant by the lower court of the offence of robbery with violence contrary to Section 296 (2) of the Penal Code. The court directed that the appellant offers his mitigation before sentence.

2. Mr. Malalah for the appellant mitigated that the appellant is aged 60 years. That he is married with 9 children 4 of whom are in secondary school. That his family was dependent on him. That his parents are dead. That the appellant was also taking care of 5 children of his late brother. That the appellant suffers from hypertension and allergy. That while in prison he has been engaged in missionary and evangelical work. That he has obtained three certificates in respect to evangelism. That he has been an exemplary prisoner while serving sentence. That before he was imprisoned he was selling timber and second hand clothes in Nairobi. That he is remorseful. Counsel prayed pleaded for leniency in sentencing.

3. The court called for a probation report. The same was prepared by Bernard Wangatia, Probation Officer. It basically captures the mitigation presented by Mr. Malalah save that it records the ailments of the inmate as ulcers and allergies. It states that the convict's family and community feel that the sentence already served is enough punishment for the offence in question.

4. Sentencing is a discretion of the trial court. In **Ambani –Vs- Republic (1990) KLR 161**, Bosire J. (as he then was) stated that a sentence imposed on an accused person must be commensurate with the moral blameworthiness of the offender and that the court should look at the facts and circumstances of the case in its entirety before settling for any given sentence.

5.. Section 333 (2) of the Criminal Procedure Code requires a court sentencing an accused person to take into account the period spent in custody awaiting trial. The appellant was on bond during the trial. He was sentenced on 12/2/2018.

6. In **Douglas Muthaura Ntoribi –Vs- Republic Meru High Court Misc. Criminal Application No. 4 of 2015** where the convict was serving death sentence for the offence of robbery with violence, Chitembwe J. substituted the death sentence with a prison term of 15 years upon considering that the robbers were armed with a panga and had only stolen Ksh. 500/= from the victim who had sustained minor injuries.

7. In **Robert Achapa Okelo –Vs- Republic Kisumu High Court Petition No. 63 of 2018** where the convict was also serving a death sentence for the offence of robbery with violence, Cherere J. considered that the petitioner had been in custody for 14 ½ years and sentenced him to the period already served.

8. I have taken into consideration all the circumstances of the case. The appellant is aged 60 years. There was no violence used during the robbery. The appellant has however served less than 2 years in prison. In my view, that is not sufficient punishment for the offence of robbery with violence. I am of the considered view that a sentence of 10 years imprisonment is appropriate for the offence committed.

9. In the premises, the death sentence meted out by the trial court is set aside. I re-sentence the appellant to serve 10 years imprisonment commencing from the date of sentence by the trial court.

**Delivered, dated and signed in open court at Kakamega this 23<sup>rd</sup> day of January, 2020.**

**J. NJAGI**

**JUDGE**

In the presence of:

Mr. Mutua for state/respondent

Miss Mburu holding brief for Malalah for appellant

Appellant - present

Court Assistant - Polycarp

14 days right of appeal.