



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

MISC. CRIMINAL APPLICATION NO. 122 OF 2017

JACOB KIPNYANGO MAIYO PETITIONER

VERSUS

REPUBLIC RESPONDENT

SENTENCE

1. On the 30th May, 2019, this court upheld the appellant's conviction over a charge of robbery with violence contrary to Section 296 (2) of the Penal Code. The court directed that the appellant offers his mitigation before considering the appropriate sentence. This is on the basis that the death sentence for the offence of robbery with violence is no longer a mandatory sentence.
2. The appellant accordingly mitigated that he is 56 years of age. That he was a first offender when he was convicted. That he is diabetic and hypertensive. That he has a young family. He pleaded for leniency.
3. The court called for a pre-sentencing report. The same was prepared by **Mr. Achungo Kennedy**, Probation officer. The report was unfavourable. It recommended a deterrent sentence.
4. The appellant was convicted of robbing his victim of a motorcycle valued at Ksh. 85,000/= and cash of Ksh. 300/= while armed with a pistol.
5. Sentencing is a discretion of the trial court. In **Ambani –Vs- Republic (1990) KLR**, Bosire J. (as he then was) stated that a sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that the court should look at the facts and the circumstances of the case in its entirety before settling for any given sentence.
6. Section 333 (2) of the Criminal Procedure Code requires a sentencing court to take into account the period spent in custody awaiting trial.
7. I have considered the sentences imposed in some other cases where convicts of robbery with violence have had their sentences reviewed. In **Michael Kathewa Laichena –Vs- Republic (2018) eKLR** where the petitioner was in a gang that was armed with a gun and knives, Mabeya J. re-sentenced the petitioner to a prison term of 15 years after considering that he had been in custody for 5 years pending trial.
8. In **Benjamin Kemboi Kipkone –Vs- Republic (2018) eKLR** where 3 robbers armed with an AK 47 rifle robbed the complainant of Ksh. 250,000/= and a mobile phone Chemitei J. substituted the death sentence with 20 years imprisonment.
9. In **Paul Ouma Otieno –Vs- Republic (2018) eKLR** where the accused was armed with an AK 47 rifle and a kitchen knife robbed the complainant of Ksh. 450,000/= and 3 mobile phones, Majanja J. substituted the death sentence with 20 years imprisonment.
10. In **Wycliffe Wangugi Mafura –Vs- Republic Eldoret Criminal Appeal No. 22 of 2016 (2018)** the Court of Appeal imposed a sentence of 20 years imprisonment where the appellant was involved in robbing an Mpesa shop agent with the use of firearm.
11. In **Benson Ochieng & France Kibe –Vs- Republic (2018) eKLR** the petitioner was re-sentenced to 20 years imprisonment upon the court considering that the offence was aggravated by the use of multiple guns by an organized gang to commit armed robbery.
12. The appellant was arrested on 29/11/2012 and sentenced on 15/5/2017. He was in custody for 4 ½ years awaiting trial. I have considered the facts and circumstances of the case. I do not think that the death sentence is appropriate. The sentence of death imposed by the lower court is therefore set aside.
13. However robbery with violence is a very serious offence. People cannot be allowed to reap where they have not sown by use of force. Taking into account that the appellant was in custody for 4 ½ years awaiting trial and considering that he was armed with a pistol when he robbed the victim, I re-sentence him to serve fourteen years imprisonment commencing from the date of sentence by the lower court.

Delivered, dated and signed in open court at Kakamega this 25th day of February, 2020.

JESSE N. NJAGI

JUDGE

In the presence of:

Mr. Mutua for State/Respondent

Petitioner - present

Court Assistant - Polycap

14 days right of appeal.