



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 52 OF 2019

AGGREY RASTO WANDEL.....PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Petitioner was convicted for the offence of Robbery with Violence contrary to Section 296(2) of the Penal Code and sentenced to death in Criminal Case No. 1972 of 2007. He appealed in HCRA. No. 250 of 2008. The appeal was dismissed and sentence upheld.

2. The Appellant has now petitioned this court for review of sentence in view of the Supreme Court declaration in ***Francis Kariokor Muruatetu & Another vs. Republic SCK Pet. No. 15 of 2015 [2017] eKLR.***

Brief Circumstance of the offence

3. The particulars are that on 17th June, 2007 at 3: 00 a.m. at Nyali Estate the Appellants jointly with others not before court while armed with dangerous weapons and a toy pistol robbed WYCLIFF EGESA KHAEMBA of one Honda Generator and a Fridge make Samsung S/NO 4ACW700085X all valued at KSHS. 60, 000 and immediately before or after the time of such robbery wounded the said WYCLIFF EGESA KHAEMBA.

4. The Petitioner submitted that the Death Sentence which was commuted to life imprisonment is unconstitutional. He has now exhausted his right of appeal and approaches court to declare that the death sentence is unconstitutional and impose an appropriate sentence upon him.

5. He further submitted that he was once a robber and regretted the same. He was a bouncer at Mamba Village when the co-accused asked the Petitioner to escort him to where the robbery took place but he did not know that the co-accused had a toy gun. It is his co-accused that forced the Petitioner into the robbery. He submitted that he has however reformed and wishes to go back to the society.

6. The prosecution submitted that the petition before court is wrong, unprocedural and the same should be dismissed. The prosecution submitted that should the court find it fit to entertain the petition, then the Petitioner should be jailed to 27 years in prison.

7. On further submission the Petitioner added that this court has jurisdiction to entertain this Petition and pleaded with the court to review his sentence; that he was arrested in the year 2007 at the age of 30 years and that he is now 42 years old; that for all the years he has been in custody he has never been found with any misconduct and has since reformed and acquired Diploma and Certificate in Discover Bible School.

8. I have considered the Petition as well submissions of the parties. On the issue of sentencing the Petitioner submitted that he has reformed, and that this is evidenced by the Prisoner's Progress Report. Indeed, he may have reformed and may even have been rehabilitated going by the responsibilities he carries on in prison. However, the element of retribution must be seen to be evident. The society expects sound policy judgment from the courts. A person who has been convicted of a crime must be adequately punished to achieve all the above three objectives. The court notes that the Petitioner confesses to having been a robber, and was lured to the scene by the co-accused but that does not exonerate him from the offence that was committed.

9. In the upshot, and in consideration of the facts herein, this court replaces the death sentence herein, and hereby sentences the Petitioner to serve a jail term of twenty (20) years from the date of conviction.

That is the Judgment of the court.

Right of appeal in 14 days.

Dated, Signed and Delivered at Mombasa this 30th day of March, 2020.

E. K. O. OGOLA

JUDGE

In the presence of:

Petitioner in person via video link

Ms. Mwangeka for DPP

Mr. Kaunda Court Assistant