

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

MISCELLANEOUS CRIMINAL APPLICATION NO. 81 OF 2019

GEOFFREY SHIVO BETTI.....APPLICANT

VERSUS

REPUBLIC.....DIRECTOR OF PUBLIC PROSECUTIONS

RULING

1. The applicant herein was convicted, on 5th October 2006, in Kakamega CMCCRC No. of 2685 of 2005, on three counts of robbery with violence, contrary to section 296(2) of the Penal Code, Cap 63, Laws of Kenya, and on three counts of assault causing actual bodily harm contrary to section 251 of the Penal Code, and was sentenced to suffer death on the robbery with violence counts and three years' imprisonment on the assault counts. The applicant filed an appeal at the High Court, Kakamega HCCRA No. 112 of 2006 (consolidated with Kakamega HCCRA No. 113 of 2006), which was dismissed on 29th November 2010. He moved on to the Court of Appeal, in Kisumu CACRA No. 578 of 2010. The Court of Appeal, in a decision rendered on 6th November 2015, dismissed the appeal.

2. He initiated the instant application, which is undated, but was lodged in court on 30th September 2019, seeking a rehearing of the matter with respect to the sentences imposed on him. I have gone through the application and the affidavits sworn in support of it. To my mind the issue of reconsideration of the sentence is within the jurisdiction of the court, going by *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR, however, the other issue, as whether he had been accorded a fair trial, is not available for consideration. He argued appeals both here and at the Court of Appeal, he should have raised that issue at the hearing of the appeals. In any event, both appellate courts reviewed the record of the trial court and concluded that the conviction of the applicant was safe and free of any substantive error of law or fact, meaning that he did receive a fair trial.

3. On the death sentence, there are recent developments in the Kenyan jurisprudence, particularly regarding mandatory sentences. The Court of Appeal and the Supreme Court have led the way with regard. See *Francis Karioko Muruatetu & another vs. Republic* (supra) and *Dismas Wafula Kilwake vs. R.* [2018] eKLR.

4. Upon conviction, the applicant did not express any remorse. He merely said that he had nothing to say, except that he required to be supplied with the typed copies of the proceedings. The trial record reflects that a series of robberies were committed that material day, by persons who were armed with cutlasses, thirteen individuals suffered injuries in the course of the robberies. P3 forms were placed on record for three of the victims, and, according to the reports, the victims had cut wounds on various parts of their bodies caused by sharp objects. The trial court noted that cases of robbery with violence were then prevalent in the area, which left many people maimed and others killed.

5. Are there any factors that I should take into account in mitigation of sentence? The applicant has not pointed to any such factors. He has though lodged certificates of completion of religious studies that he undertook while in prison, and of a Kenya Certificate of Primary Education (KCPE).

6. I have taken into account the viciousness of the robberies the subject of these proceedings. Many innocent persons suffered grave injuries, and lost property. I note that the applicant has tried to better his life, by undertaking studies in prison, but I have not seen any reports from prison with regard to whether there has been any rehabilitation or reform on his part. The grievous crimes that he committed must be paid for.

7. In the spirit of *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR, I shall quash the sentence of life imprisonment that was imposed on the applicant by the trial court, and confirmed by the two appellate courts. I shall substitute that sentence with one of thirty (30) years imprisonment, to run from the date of conviction on 5th October 2006. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS.....26thDAY OF.....June.....
.....2020

W MUSYOKA

JUDGE