



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL PETITION NO. 5 OF 2020

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

BERNARD OUMA ABAI JAUGENYA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

**(Being an Application for Revision of Sentence and Conviction in Kisumu HCRA 134/2012 and
Originally from SPM's court, Siaya vide Criminal Case No. 525 of 2011 before Hon. R.B. Ngetich)**

JUDGMENT

1. The Petitioner **BERNARD OUMA ABAI JAUGENYA** was jointly with two others convicted of the offence of robbery with violence and sentenced to suffer death by Hon. R.B. Ngetich SPM (as she then was on 19/12/2012 *vide Siaya PM 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 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 of 2014*.
4. The Petitioner submits that he regrets the offence, prays for leniency and that he was reformed. Certificates shown to the court show that he was 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 from the time of his arrest.
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, submissions, 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 where 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 the prison as shown by certificates filed in court.
9. The complainant did not sustain serious injuries. They were classified as harm and the weapons used in the robbery were not as lethal. They used clubs and rungus to assault and threaten the complainant.
10. 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.
11. 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 arrest on 19.12.2012. The Petitioner shall also be reporting, upon his release, to the area chief once every month on Fridays for the next twelve months from date of his release from prison.

12. Orders accordingly.

Dated, signed and delivered at Siaya, this 29th day of July, 2020

R.E. ABURILI

JUDGE

In the presence of:

Bernard Ouma Abai Jaugenya, Petitioner in person in prison via Microsoft teams

Mr. Okachi, SPPC for State

Court Assistants: Brenda Achieng and Modestar Mutiemani