



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

PETITION NO. 14 OF 2019

JACKSON KIMATHI MARETE.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. **JACKSON KIMATHI MARETE (the petitioner)** was jointly charged with others with the offence of robbery with violence contrary to **section 296 (2) of the Penal Code**.
2. The particulars of the offence were that, on 23/11/1993 at about 3:00 am, a gang of robbers descended on the house of **Justus Kirunja** armed with axes, simis and runkus, broke into it and robbed him Kshs 1,200/= and in the course of the robbery fatally wounded **him**.
3. The petitioner and the others were convicted of the offence and sentenced to death. He appealed against the decision in **H.C Criminal Appeal Nos. 205 of 1996** but the same was dismissed.
4. He further appealed to the Court of Appeal in **Criminal Appeal No. 07 of 2001 (consolidated)** but the same was likewise dismissed.
5. The Petitioner faced further charges of **Robbery with violence contrary to section 296 (2) in Criminal Case No. 976 of 1994**.
6. The particulars of the offence were that on 9/11/1993, while armed with “simis”, axes, “pangas”, “runkus” and other dangerous weapons violently robbed **Jeremiah Mungania Ayub alias Ayub Mukulima** of Kshs. 25,000/=. In the statement of inquiry the petitioner had acknowledged having being cut with a “simi” on his left hand by the complainant, at the time of the robbery. He also admitted receiving Kshs. 3,900/= as his share of Kshs. 25,000/=.
7. The trial court found him culpable of the offence and sentenced him to death. He appealed against the decision in the High Court **Criminal Appeal No. 99 of 1996** and in the Court of Appeal in **Criminal Appeal No. 31 of 2001** but in both instances his appeals were dismissed.
8. The petitioner states that he had been charged, in yet another case of robbery with violence contrary to **section 296 (2) of the Penal Code** in **Criminal Case No. 676 of 1994**, but the particulars of the offence and the outcome were not availed.
9. In his petition, the petitioner urges the court to resentence him considering the facts, mitigation and sentence pursuant to the Supreme Court’s judgment in **Francis Karioko Muruatetu & another v Republic [2017] Eklr**.
10. In that case, the Supreme Court of Kenya held that the mandatory nature of the death sentence was unconstitutional as it denied the Court its discretion in sentencing. The Court proceeded to set out the criteria or the principles that should guide a Court in sentencing. Some of the considerations are age of the offender, being a first offender, whether the offender pleaded guilty, the character and record of the offender, commission of the offence in response to gender-based violence, remorsefulness of the offender, the possibility of reform and social re-adaptation of the offender and any other factor that the Court considers relevant.
11. Though the Supreme Court was dealing with the offence of murder, the view I take is that the same principle applies in other cases where the law provides for a mandatory death sentence including the instant case of robbery with violence. See the Court of Appeal decision in **William Okungu Kittiny vs. Republic [2018] eKLR**.
12. I have considered the circumstances under which the offence was committed. In **Criminal Case No. 3723 of 1993**, the petitioner participated in a planned action. **Pw1** who positively identified the attacker who included the petitioner, narrated how a simi was placed on the waist band of her skirt and with one stroke it was ripped open to the hem and she was left naked. She defecated and urinated as a result of

the trauma she underwent.

13. The petitioner presented a favourable report from the Prisons Department. He has since served 23 years imprisonment for the offence. Having considered the particulars of the offence, the nature of the injuries occasioned to the victims and in particular that the petitioners and his cohorts, killed their victim in the process of the robbery, their actions was reprehensible and should be discouraged.

14. People should be discouraged from dispatching others to the next world in the name of seeking a living. There are many lawful ways of looking for a livelihood than getting the same from dispatching others to the life hereafter. As regards the sentence in **Criminal case No. 3723 of 1993**, I set aside the death sentence and sentence the petitioner to 40 years imprisonment.

15. In addition, the petitioner was not a first time offender. He had been charged, convicted and sentenced with three consecutive counts of robbery with violence. His life was once lost and the same is still redeemable. I therefore set aside the death sentence in **Criminal Case No. 976 of 1994** and substitute therefor with a sentence of 20 years imprisonment.

16. As regards his petition on resentencing in **Criminal Case No. 676 of 1994**, with no records of his appeal and the subsequent appeal to the Court of Appeal, the aforesaid application is premature as this court cannot discern that he has exhausted his chances of appeal. This is a pre-condition in **paragraphs 110 and 111 in the Francis Muruatetus decision (supra)** as read with **section 365 of the Criminal Procedure Code**. In this regard, this court cannot at this stage consider the same.

17. Accordingly, the appellant is to serve 30 and 20 years for the two cases **CR. Case No. 3723 of 1993** and criminal **Case No. 976 of 1994**. The sentences are to run consecutively. The sentence in **3723 of 1993** to start from the first time the petitioner was sentenced.

Orders accordingly.

DATED and DELIVERED at Meru this 12th day of August, 2020.

A MABEYA

JUDGE