



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

PETITION NO. 22 & 41 OF 2019

MARTIN MBAE

DAVID KOOME.....PETITIONERS

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Petitioners, **Martin Mbae and David Koome**, were charged before the Chief Magistrate's Court at Nkubu with robbery with violence contrary to **Section 295 as read with Section 296(2) of the Penal Code**.
2. It was alleged that on the 9th of April 2006 at Taita Sub-Location in Meru Central District within the Eastern Province, jointly with others not before court, while armed with dangerous weapons namely pangas, rungas and iron bars (they) robbed **Fred Kaimenyi** of one pair of shoes, one trouser, one coat and cash Kshs. 2,500/- all valued at Kshs. 10,500/- and at or immediately before or immediately after the time of such robbery used actual violence to the said **Fred Kaimenyi**.
3. After the trial the petitioners were found guilty and sentenced to mandatory death sentence. Being aggrieved by that decision, the petitioners appealed to this court separately, **HCCRA Nos. 94 & 95 of 2009**. Their appeals were heard together before Lesit J and M. Kasango JJ who on 13/04/2011 dismissed their appeal. They then appealed to the Court of Appeal in Nyeri C.A appeal No. 102 & 109 of 2011 which was likewise dismissed on 18/09/2013.
4. Vide their Motion on Notice dated 19/06/2019 and 24/10/2019 respectively, the petitioners petitioned this court to review their sentence on the basis of the Supreme Court decision in the case of **Francis Muruatetu and Others vs Republic [2017] eKLR**.
5. In that case, the Supreme Court of Kenya held that the mandatory nature of the death sentence under **Section 204** of the Penal Code was unconstitutional as it denied the Trial 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*.
6. 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 case of robbery with violence. See the Court of Appeal decision in **William Okungu Kittiny vs. Republic [2018] eKLR**.
7. I have considered the foregoing and the circumstances under which the offence was committed. The petitioners were in the company of others armed, value of the property robbed was valued at Kshs. 10,500/- and the victim was injured in the process.
8. The petitioners submitted that they are first time offenders aged twenty eight (28) years old when they were incarcerated and are now forty one (41) years old having been in custody for the last thirteen (13) years. They are remorseful for what they did. They have rehabilitated and will not indulge in any criminal activities again. They seek forgiveness before God, the victim's family and the society.
9. The prison reports concerning the petitioners each dated 3/06/2020 stated that each would be a good and productive citizen if given a second chance in life. They believe that they have been transformed and rehabilitated. The state made no submissions.
10. Taking into consideration facts of the case and the mitigation given, and in consideration that the Petitioners have been in custody for over 14 years since they were convicted the death sentence meted against them is hereby set aside and substituted with a jail term of 20 years

from the date they were convicted 14th May 2009.

11. Re-sentencing Petition No. 22 of 2019 and No. 41 of 2019 as well as Misc. Criminal applications No. 54 of 2015 & 26 of 2015 are hereby closed. The Registry to enter the outcomes in the register immediately to avoid future duplication of files by parties.

HON.ANNE ADWERA ONG'INJO

JUDGE

RULING DATED AND DELIVERED AT MERU ON THIS 29th DAY OF SEPTEMBER 2020.

HON.ANNE ADWERA ONG'INJO

JUDGE