



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL PETITION NO. 31 OF 2019

MARGARET MUTHONI GICHIRA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Petitioner Margaret Muthoni Gichira was charged and convicted for the offence of Robbery with violence Contrary to Section 296 (2) of the Penal Code, and sentenced to death on the 4th November, 2013.

Her appeals to the High Court and Court of Appeal were dismissed.

Pursuant to the **Muruatetu** Supreme Court decision – **Petition No 14 & 15 of 2015, Francis Karoki Muruatetu & Another –v- R (2017)eKLR**, the petition approached this court for re-sentencing. She filed her mitigating submissions on the 28/7/2020.

2. The **Muruatetu** decision has become the darling of Capital offenders and those sentenced under **Section 8 of the Sexual Offences Act** as it has given them second chances in life by substituting death and life imprisonment sentences with definite term imprisonments, and in some cases release upon considering terms served both in custody and imprisonment and other mitigating factors.

3. The particulars of the offence as stated in the charge sheet was that on the 4th day of November 2013 along Marura “A” Road in Mwea West District within Kirinyaga County jointly with others not before the court robbed Susan Wanjiku Muthike Kshs 38,000/- and at or immediately before or immediately after the time of such robbery wounded the said Susan Wanjiku Muthike.

4. At the time she committed the offence, the petitioner was a young woman. In her mitigation, she regrets having thrown all worries to the wind and walked blindly without consideration to the larger society. Having served six years in prison, the petitioner has realized the folly of her carefree lifestyle and is remorseful. She has learnt some few trades through the prison training programmes which maybe useful in life. In highlighting her written submissions, the petitioner told the court that she is sickly with diabetes and hypertension and that she does not know how or where children are.

5. In regard thereto, I have considered the principles set down in the **Muruatetu** decision and the Judiciary Sentencing Policy Guidelines which were therein re-emphasized, as well as the objectives of sentencing.

These include, and not limited to

- a) **The age of the offender**
- b) **Being a first offender**
- c) **Whether the offender pleaded guilty.**
- d) **Character and record of the offender.**
- e) **Commission of offence in response to gender- based violence.**
- f) **Remorsefulness of the offender.**
- g) **The possibility of reform and social re-adaption of the offender.**

h) Any other factor that the court considers relevant.

6. The sentencing policy guidelines provides that the sentence imposed must meet the following objectives;

a) Retribution – to punish the offender for his/her criminal conduct in a just manner.

b) Deterrence – to deter the offender from committing a similar offence subsequently as well as discourage other people from committing similar offences.

c) Rehabilitation – to enable the offender reform from his criminal disposition and become a law abiding person.

d) Restorative justice – to address the needs arising from criminal conduct such as loss and damages.

e) Community Protection – to protect the community by incapacitating the offender.

f) Denunciation – to communicate to the Community condemnation of the criminal conduct.

7. The Learned Assistant Director of Prosecution Mr. Ashimosi urged that although the offence is serious, substitution with 15 years imprisonment would be appropriate.

8. I have noted that the financial loss to the victim of the crime was Kshs 38,000/- and minor soft tissue injury during the robbery, which was committed without any weapons though violence was used. In the case **James Kariuki –v- Republic (2018) eKLR**, the court on re-sentencing substituted the death penalty with 15 years imprisonment in a robbery with violence offence where no weapon or excessive violence were used.

9. In the case **David Ochieng Owour –v- State (2018) eKLR**, the court allowed the appeal on sentence and set aside the death penalty for a probation sentence for the offence of robbery with violence upon considering that the appellant was young at the time the offence was committed, and that the offender had been rehabilitated.

10. Also, in **Mulamba Ali Mabanda –v- R (2018) eKLR**, the appellant robbed the victims of household items armed with rungas and pangas. The Court of Appeal noted that the appellant was fairly a young offender and had been reformed during the nine years he had served in prison, and observed that the period was enough and deemed to have paid his debt to society.

11. Considering the circumstances under which the offence was committed, there are no aggravating circumstances. The petitioner has reformed and ready for re-adaption and re-habilitation into the community, and to be re united with her family. She was a first offender. She has demonstrated her ability to use her young energy to serve the community and her family. For uniformity purposes, I will cite a few decisions with comparable circumstances.

12. In **Lawrence Nkonge Mwiandi –v- R(2018) eKLR**, the death sentence was substituted with time served in both custody and prison of 15 years.

13. The Petitioner in **Criminal Petition No. 46/2018 Cyprian Ingira Ikobwa –v- R (2019) eKLR** was re sentenced to Eighteen years from a death penalty, where fire arm was used to commit the robbery of Kshs 11,000/-.

14. In **Douglas Muthaura Ntoribi –v- R, Meru High Court, Misc. Criminal Appeal No. 4 of 2015 – Mustapha –v- R (2019) eKLR**, the petitioner had served 7 years in prison on a death penalty for robbing Kshs 500/- from the victim armed with a panga. The death sentence was substituted with 5 years prison term.

15. Also in **Philip Ndamuli Kisavi –v- R(2018) eKLR**, the petitioner had been sentenced to life imprisonment. The court set aside the said sentence and substituted it with 17 years jail term. The offence was committed armed with a riffle to rob a vehicle. He had been incarcerated for a period of 15 years during which period he underwent several trainings that equipped him with life skills and knowledge outside prison.

16. As evidently clear, sentencing is at the discretion of the court. It is an important task in justice dispensation. One of the prime objectives of criminal law and justice is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime – **Thomas Mwambu Wanji –v- R (2017)eKLR**.

I have considered that the petitioner has served six years in prison and one year in custody. The circumstances and peculiarity of the manner the offence was committed has also been taken into account, that the robbery did not involve a huge sum of money nor excessive force or use of a weapon.

17. An appropriate and consummate sentence in the circumstances that comment itself to me is that the petitioner has paid for the crime by the term already served. The petitioner is hereby released back to the society and the community to prove she has indeed reformed, and ready for re-adaption to the society.

18. Unless otherwise lawfully held, the petitioner is set at liberty.

Orders accordingly.

Dated, Signed and Delivered at Kerugoya this 19th day of November 2020.

J. N. MULWA

JUDGE