



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

CRIMINAL APPEAL NO 28 OF 2018 consolidated with

CRIMINAL CASE NO 29 OF 2018

ALI MAGHANGA.....1ST APPELLANT

RAPHAEL KIRIGHA.....2ND APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(An appeal from the original sentence by Hon. Onkoba Mogire, Senior Resident Magistrate delivered on 15th May 2018 in Taveta Principal Magistrate's Court Criminal Case No 61 of 2017)

RULING ON SENTENCE

1. The appellants were jointly charged with the offence of robbery with violence contrary to Section 296 (2) of the Penal Code. The particulars of the charge were that on the 25th day of February, 2017 at about 0100 hrs at Daraja ya Maveta area within Taita Taveta County jointly with others not before the court robbed Peter Leiyo Kshs 38,000/= and at the time of such robbery struck the said Peter Leiyo with a Panga on the forehead.
2. The appeal was heard by Hon. Judge Farah Amin who rendered her Judgment on 25th February, 2020. She dismissed the appeal on conviction. On the issue of sentence, she directed the Voi Probation Officer to carry out the necessary inquiries and file a report on the appropriate sentence within 28 days from the date of the Judgment.
3. On 23rd September, 2020 the Probation Officer, Mr. Piri, filed re-sentencing reports for the appellants. The said reports recommended that the appellants should not be given non-custodial sentences.
4. This court has considered the nature of the offence which was committed by the appellants. The evidence which was adduced by the victim of the offence of robbery with violence, was that he was injured with a panga on his forehead and the wound had to be sutured. The victim was beaten by four men. He attended hospital on a daily basis for several days to be injected with anti-tetanus medication and for treatment of his injuries. Apart from the foregoing, the victim was robbed of Kshs 38,000/=. Two of the men who accosted the victim were arrested at the scene of crime. They are the appellants in this appeal. The other two robbers escaped.
5. In addition to robbing and beating up the victim who testified as PW1, the appellants and their two colleagues who disappeared from the scene of crime, shouted that the victim was a thief. The said action attracted members of the public who set on the victim with blows until a sympathetic member of the public, who testified in the lower court as PW2, intervened and prevailed upon the members of the public to stop beating up the victim.
6. The police were called to the scene. The stage manager of Naekana Sacco was called by the police and on his arrival at the scene, he identified the victim as the driver of motor vehicle registration No KCF 204B registered with Naekana Sacco. It is thus apparent that the offence was aggravated to such an extent that the victim sustained several injuries whose degree was assessed as maim. Further, had it not been for PW2, the tables would have been turned against the victim whom the appellants had tagged as a thief, when in the real sense of the word, they were the robbers.
7. This court has considered all the foregoing facts and the decision in the case of **Francis Karioko Muruatetu & Another v Republic (2017) eKLR** where the Supreme Court of Kenya held that the mandatory nature of the death sentence is unconstitutional. I however hasten to add that the said court did not say that the death sentence cannot be imposed in an appropriate case.

8. I note that the appellants were given an opportunity to mitigate before the Trial Court. I have considered their mitigation. In the circumstances of this case, it is my considered view that a sentence of 30 years imprisonment will serve the ends of justice. I therefore substitute the death sentence which was imposed by the Trial Court with a custodial sentence of 30 years imprisonment for each appellant. In line with the Provisions of Section 333 (2) of the Criminal Procedure Code, the sentence of 30 years imprisonment shall take effect from 27th February, 2017 since the appellants were remanded in prison throughout their trial in the lower court. The appellants have 14 days right of appeal.

DELIVERED and SIGNED in open court at Voi High Court on this 12th day of November 2020.

NJOKI MWANGI

JUDGE

In the presence of:

1st appellant present in person

2nd appellant present in person

Ms. Mukangu for Prosecution Counsel- for the DPP

Mr. Josephat Mavu-Court Assistant.