



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 206 OF 2019

IN THE MATTER OF: THE CONSTITUTION OF KENYA (SUPERVISORY AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOM OF THE INDIVIDUAL) HIGH COURT PROCEDURE PRACTICE AND PROCEDURE RULE 2013

AND

IN THE MATTER OF: ARTICLE 23(1) OF THE NEW CONSTITUTION

AND

IN THE MATTER OF: ARTICLE 165 OF THE NEW CONSTITUTION

AND

IN THE MATTER OF: ARTICLE 25(c) OF THE NEW CONSTITUTION

AND

IN THE MATTER OF: ARTICLE 50(2) OF THE NEW CONSTITUTION

AND

IN THE MATTER OF: ARTICLE 258(1) OF THE NEW CONSTITUTION

AND

IN THE MATTER OF: ARTICLE 259(1)(4) OF THE NEW CONSTITUTION

AND

IN THE MATTER OF: ARTICLE 259(1)(B) OF THE NEW CONSTITUTION

AND

IN THE MATTER OF: ARTICLE 84(10) OF THE NEW CONSTITUTION

BETWEEN

ALI OMAR ABDULRAHAMAN.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein **Ali Omar Abdulrahman** was charged and convicted with Robbery with Violence contrary to **Section 296(2)** of the **Penal Code** and was sentenced to death. He filed Appeal in the Court of Appeal being **Mombasa Criminal Appeal NO.187 of 2011**. The Appeal was dismissed.

2. The Petitioner is now in this court for purpose of resentencing pursuant to Supreme Court decision in **Francis Karioko Muruaete & Another ..Vs...R (2017) eKLR**, in which the apex court declared the mandatory nature of the death sentence is constitutional..

3. That evidence was to the effect that in the early hours of the morning of **16th August, 2002** at about **2.30am**, **PW1** and her husband (**PW3**) returned home from an outing and while her husband went to the back of the house to get someone to open for them, leaving **PW1** in front, the latter was attacked by a group of six men. In the cause of the attack, which left her with a right hand injury, they robbed her of her purse, shoes and other personal belongings. The men had torches and were armed with a knife, bows and arrows. As **PW1** raised alarm, her husband was also being attacked at the back of the house. The alarm raised by **PW1** attracted four Police Officers among then **PW2**, **PW5** and **PW7** who were on patrol nearby. As the officers approached, they saw two men running away from the scene towards them. **PW2**, using the butt of his gun hit one of the fleeing robbers thereby disabling and arresting him, while **PW5** pursued the second suspect who disappeared in the bush in the darkness. Not even the gun shot in the air by **PW5** could stop him. The suspect who had been hit by **PW2** was identified as the Appellant. He was found with bows and arrows as well as a lady's pair of shoes. He was taken to the scene of attack when **PW1** was able right away to identify him.

4. For purposes of resentencing, Petitioner submitted that he has served **19 years in jail** and that he has reformed, and is now ready to return to the free society; that he had aging parents to take care of and that he has learnt a trade in prison which will help him to engage in productive venture in society.

5. **Miss Balungo**, Learned Counsel for the State, while conceding that this court can now resentence the Petitioner in line with the case of **Muruatetu** above, submitted that the Petitioner was armed;

a. with offensive weapons during the robbery.

b. The Petitioner used pangas and rodes and arrows to attack his victim.

c. The attackers were more than one.

d. They attacked husband and wife.

6. **M/S Balungo** submitted that in line with the above aggravating factors, the Petitioner should be jailed for 30 years.

7. I have considered the mitigating and aggravating factors.

8. In my view, the appropriate entry point for sentencing for Robbery with Violence is fourteen years. This is because simple robbery under **Section 296(1)** of the **Penal Code** attracts a minimum sentence of fourteen years imprisonment. Robbery with Violence, which under **Section 296(2)** is aggravated robbery has been singled out by the Legislature for enhanced penalty.

9. Even then, the Petitioner has been in jail for **19 years**. Although the crime committed by the Petitioner was grave, the people he injured have healed well. In my view the **19 years** served by the Petitioner is adequate punishment for the crime he committed.

10. I have therefore established that I have the jurisdiction to resentence the Petitioner.

I therefore proceed to substitute the death penalty imposed on the Petitioner with a sentence equal to the time already served. Consequently, the Petitioner shall be released from prison forthwith unless otherwise lawfully held.

That is the Judgment of the court.

DATED, SIGNED and DELIVERED at MOMBASA on this 15th day of DECEMBER, 2020.

E. K. OGOLA

JUDGE

Judgment delivered in chambers via MS Teams in the presence of:

Mr. Fedha for State

Petitioner in person

NOTE:

In view of the declaration of measures restricting court operations due to

the **COVID-19** pandemic and in light of the directions issued by His Lordship the Chief Justice on **15th March 2020**, this Judgment has been delivered to the parties online with their consent. They have waived compliance with **Order 21 Rule 1** of the Civil Procedure Rules which requires that all judgments and rulings be pronounced in open Court.