



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
HIGH COURT APPEAL NO.119 OF 2007 AT MOMBASA
IN RESPECT OF CRIMINAL CASE NO.3481 OF 2006 AT MOMBASA
CONSTITUTIONAL PETITION NO.171 OF 2019
MOHAMED HAMISI.....PETITIONER
VERSUS
THE DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT
JUDGMENT ON RESENTENCING

Background

1. The Petitioner herein was charged with the offence of **Robbery with Violence** contrary to **Section 296(2)** of the **Penal Code**. The particulars being that on **22nd September, 2006** at around **8,45pm** at Mtongwe Village in Mombasa District within Coast Province, jointly with others not before court, robbed **Patrick Kinoti** of his **mobile phone Nokia 2650** valued at **Kshs.5,000/=**. The Complainant was able to identify him as they both threatened him using the knives.
2. The matter proceeded and the accused was convicted and sentenced to death in **Criminal Case No.3481 of 2006**.

Circumstances of the case

3. The Petitioner was in the company of another who was armed with

dangerous weapons namely knife; the Petitioner used fear and intimidation on the complainant by threatening him using the knife; the Petitioner robbed the Complainant a Mobile Phone **Nokia 2650** valued at **Kshs.5,000/=**.

Re-sentence

7. In the case of **Thomas Mwambu Wenyi –vs- Republic(2017)eKLR**, the court cited the decision of the Supreme Court of India in **Alister Anthony Pereira – vs- State of Mahareshra at paragraph 70-71**, where the Court held the following on sentencing:-

“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person upon proof of crime. The Courts have evolved certain principles; twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for awards of appropriate sentence”.

8. The offence that the Petitioner herein is charged with was a grave one and any opposition could have led to the loss of life of either of the parties. In the case of **Doughlas Muthaura Ntoribi –vs- Republic, Meru High Court Criminal Appeal No.4 of 2015**, the robbers while

armed with a panga stole **Kshs.500/=** from the victim and occasioned him minor injuries Chetembwe J. substituted the death sentence with a prison term of **15 years**. In this matter, the Petitioner has spent **14 years** in prison. In my view, that is adequate punishment for his crime. I therefore herewith set aside the death sentence imposed on the Petitioner. In place thereof, I jail the Petitioner for the time he has served, with the result that he is herewith set free and released from prison unless otherwise legally held.

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.