



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL 18 OF 2018

ROBINSON MBUGUA MACHARIA.....APPELLANT

VERSUS

REPUBLIC.....STATE

(Being an appeal from the Judgment of Honourable S. M. Soita Principal Magistrate,

delivered on 11th June, 2010 in Molo Chief Magistrate's Court Criminal Case No. 657 of 2008)

JUDGMENT

1. The Appellant, Robinson Mbugua Macharia, was charged and convicted of the offence of robbery with violence contrary to section 296(2) of the Penal Code. His case was heard and finalized in Molo Chief Magistrate's Court.
2. At the conclusion of the case, the Learned Trial Magistrate pronounced the penalty of death for the Appellant as mandated in section 296(2) of the Penal Code.
3. The Appellant initially appealed against both conviction and sentence. However, when he appeared me on 18/10/2018, the Appellant informed me that after much thought, he had decided to withdraw his appeal against conviction and that he only wished to address the Court on sentence. He wanted to persuade the Court to substitute the death sentence for a term in prison.
4. I allowed the withdrawal of the appeal against conviction and considered the Appellants appeal against his sentence.
5. The record as established by the Trial Court shows the following happened on the fateful night when the offence was committed. The Complainant was attacked by three people on his way home at night at around 9:00pm. The Appellant was one of them. The assailants were armed with knives. He was ordered to sit down. He complied. He was asked to give all the money he had. He gave the Kshs. 500/- he had. They also relieved him of his pair of shoes and a sweater. The assailants then asked him to leave and to be careful not to look behind. The Complainant complied but as he was doing so, one of the assailants hit him with a blunt object on his head. Through some amateur detective work, the Complainant followed the Appellant all the way to a bar in Elburgon town and raised the alarm. That is how the Appellant was apprehended – in the hands of the public baying for his blood.
6. The Appellant submitted that he should be spared the death sentence in the circumstances of this case. He submitted on the following mitigating circumstances:
 - a. That he is remorseful;
 - b. That he is a first offender;
 - c. That he has reformed greatly since he went to prison;
 - d. That he was intoxicated when he committed the offence;
 - e. That he is still youthful and he hopes to go back to society and restart life.
7. Mr. Chigiti, Learned Counsel for the State, submitted that the Appellant was a member of a gang who were armed with crude weapons. That they dealt with the Complainant mercilessly. They inflicted injuries on him and left him by the roadside. They subjected him to a lot of

unnecessary cruelty. Mr. Chigiti submitted that the Appellant was lucky since he was about to be lynched by members of the public. He recommended that in view of the aggravating circumstances the court should substitute the death sentence with a term in prison of 25 years.

8. I have weighed all the mitigating and aggravating circumstances in this case. On the mitigating side of the equation, I have considered that:

- a. The Appellant is a first offender;
- b. The Appellant is remorseful;
- c. The Appellant was intoxicated when he committed the offence; and
- d. The Appellant is still youthful with a whole world before me.

9. On the other hand, the aggravating circumstances evinced from the Application are:

- a. The Appellant was in the company of at least three other people who were never apprehended;
- b. The Appellant and his band of assailants had crude offensive weapons;
- c. The Complainant was actually assaulted during the robbery.

10. I have considered the extenuating circumstances and weighed them against the aggravating circumstances. I have started from the position that the entry sentencing point for robbery with violence is fourteen years imprisonment. See, for example, *Michael Kathewa Laichena and Another v Attorney General MERU High Court Crim. Pet. No. 19 of 2018 (UR)* and *John Kathia M'itobi v Republic [2018] eKLR*.

11. In the present case, after considering all the factors, I will, therefore, proceed to substitute the death sentence imposed on the Appellant with a sentence of eighteen (18) years imprisonment. The prison term shall be computed to start running from 23/05/2008 when the Appellant was first arraigned in Court.

12. Orders accordingly.

Dated and delivered in Nakuru this 19th day of October, 2018

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JOEL NGUGI

JUDGE