

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 489 OF 2015

ISAACK JILLO DOYO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Pursuant to Section 362 of Criminal Procedure Code, the Lower Court record has been forwarded to this court so that the court can examine the same for purposes of satisfying itself as to the correctness, legality or propriety of the sentence passed in the Chief Magistrate's Court at Makadara Criminal Case No. 4833 of 2010. In that case, the Applicant who was the accused was charged with robbery with violence contrary to Section 296(2) of the Penal Code. It was alleged that on 11th December, 2010 at National Concrete Kariobangi, in Nairobi, within Nairobi area jointly with others not before court while armed with a dangerous weapon namely a pistol robbed Samson Ochieng Oyugi of Kshs. 500/=, a mobile phone make Nokia 3310 valued at Kshs. 3,000/= and at or immediately before or immediately after the time of such robbery used actual violence to the said Samson Ochieng Oyugi. The Applicant was found guilty for the offence of simple robbery under Section 296(1) of the Penal Code. He was sentenced to serve four years imprisonment.

In his submission, he urged the court for leniency on noting that he only had 72 days to complete the sentence.

Ms. Atina for the Respondent opposed the application. She submitted that although the Applicant was found guilty for simple robbery, the facts of the case were that the complainant was injured and he lost a mobile phone and cash during the robbery. The offence was only reduced on grounds of what the magistrate said was because the assault weapon was not found and other accomplices were not arrested. She urged the court to decline the application and order that the Applicant serves the full sentence.

I have accordingly considered the respective submissions. It is worthwhile to note that the attackers were armed with a dangerous weapon namely, a pistol. The complainant who testified as PW1 was injured in the process of the robbery and after the robbery he was thrown into a trench and was rescued by passersby who also gave chase to the attackers and managed to arrest the Applicant. The reasoning of the learned trial magistrate for reducing the offence from capital robbery to simple robbery in my view was not justified. Be that as it may, since this is not an appeal, I would confine myself to determining whether the sentence should be reduced. It is my view, as submitted by learned state counsel that the circumstances under which the offence was committed were grave and although the Applicant has 72 days only to complete the sentence, he should serve the full term as a deterrent measure. The application is accordingly dismissed.

DATED and DELIVERED this 14th day of December, 2015.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. *Applicant present in person*
2. *M/s Atina for the Respondent.*