



REPUBLIC OF KENYA



KENYA LAW
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**Gatheru v Republic (Criminal Appeal E052 of 2021)
[2025] KEHC 5194 (KLR) (21 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 5194 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL APPEAL E052 OF 2021**

A MSHILA, J

MARCH 21, 2025

BETWEEN

PETER NGANGA GATHERU APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal against conviction and sentence from the judgment of the (G. Omodho RM), Thika delivered on 25th June, 2019 in C.M.CR. case No.4295 of 2016)

JUDGMENT

Background

1. The Appellant had been charged with two (2) counts of robbery with violence c/s 295 as read with Section 296(2) of the [Penal Code](#); He was convicted on the main charge of Robbery with Violence and was sentenced to life imprisonment.
2. The Appellant being aggrieved by the conviction and sentence filed his appeal and listed four (4) grounds of appeal as set out hereunder;
 - i. The Charges as framed under Section 295 as read with Section 296(2) of the [Penal Code](#) were duplicated
 - ii. The prosecution failed to prove the key elements of the Charge of Robbery with violence as defined under Section 296(2) of the [Penal Code](#);
 - iii. The Appellant was not accorded a fair trial as he was not provided with the relevant documents and witness statements prior to the commencement of the hearing of the case;



- iv. The trial court failed to appreciate recent law developments on the constitutionality of the life sentence in that it was unconstitutional and also went against the Sentencing Policy Guidelines 2015.
 - v. The Appellant prayed that the conviction be quashed and the sentence set aside and the Appellant be set at liberty.
3. The Appellant then opted to abandon his appeal on conviction and prayed that the Court considers a definite sentence; The Respondent was not opposed and called for a Victim Impact Assessment or a Pre - Sentencing Report be availed to guide the court; A Pre-Sentencing Report was called for and availed to this Court.

Issues for Determination

4. The only issue framed by this court for determination is whether the sentence was harsh and excessive in the circumstances;

Analysis

5. The Appellant abandoned the appeal on conviction and the instant appeal was only on sentence; his contention was that the life sentence imposed was harsh, oppressive and excessive in the circumstances;
6. In *Ngugi v Republic* (Miscellaneous Criminal Application E025 of 2021) [2024] KEHC 1842 (KLR) (26 February 2024) (Judgment) it was observed that the jurisprudence emanating from the Court of Appeal is that the court may fix a definite period of imprisonment where a person has been imprisoned for life or the law prescribes life sentence. The prevailing jurisprudence with respect to a definite sentence is demonstrated in this aforesaid Court of Appeal decision and also in the case of *Julius Kitsao Manyeso v Republic (Criminal Appeal 12 of 2021)* [2023] KECA 827 (KLR) (7 July 2023) where it was held:-

“...We are of the view that the reasoning in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR equally applies to the imposition of a mandatory indeterminate life sentence, namely that such a sentence denies a convict facing life imprisonment the opportunity to be heard in mitigation when those facing lesser sentences are allowed to be heard in mitigation. This is an unjustifiable discrimination, unfair and repugnant to the principle of equality before the law under Article 27 of *the Constitution*”.

7. This application is therefore rightly before this court. The appropriate sentence depends on the facts and the circumstances of the case. Further the Judiciary Sentencing Policy Guidelines lists the relevant factors in sentencing at page 15 paragraph 4.1 including the gravity of the offence, the threat of violence against the victim, the nature and type of weapon used by the Applicant to inflict harm.
8. In the instant case, the Appellant and his accomplices accosted the complainant on her way from where she had gone with a friend to buy clothes for her business. The Appellant was armed with a knife which was pointed a gun at her and he demanded money with menaces from them. Together with his accomplices they asked them to remove whatever they had in their pockets, took the money and warned them to remain quiet before they vanished. They never hurt the complainant nor her friend.
9. The circumstances of this case and the mitigation rendered by the Appellant have been considered in the Pre-Sentence Report. He submitted that he was remorseful and has undergone rehabilitation. He has learnt to live as a peace-loving citizen with necessary skills to earn him a living. He was a first offender at the time of committing the offence.



10. The record indicates that he was sentenced to life imprisonment. Life imprisonment should not mean natural life of a convict. Such an indefinite sentence contravenes the right to human dignity and the right not to be subjected to inhuman and degrading treatment. An appellate court can only interfere with the sentence imposed where it is demonstrated that sentence was either too harsh or too lenient in the circumstances; therefore, the scope of this courts appellate power is to examine the court record so as to satisfy itself as to the propriety and legality of the sentence and that it has been made in accordance with the law;
11. This court is guided by the above aforementioned authorities; the record reflects that the trial court invited the Appellant to mitigation and relied on the circumstances of the case in order to support the reasonableness of its determination of the sentence imposed;
12. This court is satisfied that the trial court did not apply wrong principles of law when sentencing the Appellant; the sentences imposed by the trial court are found were within the law and are therefore, legal but with the advent of the current jurisprudence on the life sentences this court has good reasons that justify interference with the sentence imposed.
13. This ground of appeal has merit and it is hereby allowed;

Findings & Determination

14. For those reasons stated above this court makes the following findings and determinations;
 - i. The appeal on conviction was abandoned
 - ii. This Court finds the appeal on sentence to have merit and the sentence imposed is found to be harsh and excessive. The appeal on sentence be and is hereby allowed.
 - iii. The life sentence imposed is hereby set aside; and substituted with a sentence of Thirty (30) years imprisonment to run from 4/6/2016 the date the Appellant was arrested to the date of conviction on 25/06/2019 which translates to three (3) years.
 - iv. This period be deducted from the sentence in accordance with Section 333(2) of the *Criminal Procedure Code*.

Orders accordingly.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT KIAMBU THIS 21st DAY OF MARCH, 2025.

A. MSHILA

JUDGE

In the presence of

Sanja – Court Assistant

Appellant – present from Naivasha Prison

N/A – by the State

