



REPUBLIC OF KENYA



KENYA LAW
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**Saisi v Republic (Criminal Appeal E126 of 2021)
[2025] KEHC 10413 (KLR) (11 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10413 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL APPEAL E126 OF 2021**

**REA OUGO, J
JULY 11, 2025**

BETWEEN

FESTO NATO SAISI ALIAS JOHN APPELLANT

AND

REPUBLIC RESPONDENT

(An appeal from the conviction and sentence in Criminal Case No.1231 of 2014 Webuye PM's Court by Hon. S.N. Obuya PM delivered on the 8.12.2014)

JUDGMENT

1. Festo Nato Saisi alias Nato, the appellant, was charged with the offence of Robbery with Violence contrary to section 296 92) of the *Penal Code*. The particulars of the offence are: on the 11th day of November 2014, at Mangana village in Bungoma East Sub-County, within Bungoma County, jointly robbed Emmanuel Simiyu Bulili of his motorcycle, registration number KMDG 108L TVS STAR, valued at Kshs. 96,000/- and immediately after the time of such robbery, wounded the said Emmanuel Simiyu Bulili.
2. The appellant was charged with other persons who were acquitted.
3. The appellant pleaded guilty to the charge of Robbery with violence, and he was found guilty and convicted on his own plea of guilty and sentenced to death on the 8.12. 2014.
4. The appellant filed his petition of appeal on the 21st December 2021. His grounds of appeal as per his petition are as follows;
 - i. That the trial court failed to observe that the investigation tendered was shoddy given that he was taken to court for the first day and thereby convicted on my own plea of guilt.
 - ii. That the trial court failed to consider that he was not accorded sample time to defend myself and/or warned about the dire consequences of the same given that he was a first offender.



- iii. That the trial court failed to consider the sentence imposed was against the weight of the evidence adduced.
 - iv. That the trial court failed to appreciate that the sentence imposed was unconstitutional due to its mandatory nature.
 - v. That he prays that the court be pleased to subject the same based on retrial basis.
5. On the 28th July 2023 the appellant filed an amended grounds of appeal. His grounds are:
- i. Conviction be quashed , sentence be set aside and the appellant be set free.
 - ii. The amended grounds of appeal be embraced in its entirety pursuant to Article 159 (d) COK 2010.
6. Parties canvassed the appeal by way of written submissions. The appellant submitted as follows; the trial court erred in law and in fact in convicting the appellant, relying on his own plea of guilty that was equivocal. The appellant relied on the case of Ndende vs Republic (1991)R567, where the court of appeal held as follows:
- “.. the court is not bound to accept the accused person’s admission of the truth of the charge and conviction as there may be unusual circumstances such as injury to the accused person or the accused person may be confused or there have been inordinate delay in bringing him to the court from the date of arrest. The list of circumstances and examples that may lead the 1st appellant court to consider the appeal on merit even when the conviction was on the accused person own plea guilty are not closed. It is well settled that section 348 of the Criminal Procedure Code which provides that an appeal is allowed in a conviction on any ground.”
7. It was further submitted that, according to the charge sheet, the appellant was arrested on 4.12.2014 and arraigned in court on 0.11.2016 without any explanation; therefore, the appellant should be acquitted. The appellant was also confused during his plea of guilty, as he had been promised by an officer that he would be forgiven by the court if he pleaded guilty or receive a lesser sentence and would be made a state witness in the same case. It was further submitted that he was not represented by an advocate when his plea of guilty was entered, making it potentially equivocal (see case of Simon Gitau Kinene vs Republic (2016) eKLR). The trial court did not explain all the ingredients of the charge to him, especially since this offence was one that could attract the death penalty. The appellant was not made to admit or deny every element of the charge. For this argument, he relied on the cases of Republic vs Yonasani Egado and others, and Adan vs Republic (1973) EA 65. Lastly, he submitted that the mandatory nature of the sentence under section 296(2) of the Penal Code is unconstitutional and not warranted on plea. Evidence on record shows that he was a first offender and has since served 10 years since his conviction and sentencing. His case has no aggravating factors, as the charge sheet does not state that he was armed with an offensive weapon during the incident.
8. The Respondent submitted as follows: the appeal should be dismissed and the conviction and sentence upheld. The appellant was convicted on his own plea of guilty. The prosecution proved its case beyond a reasonable doubt on the key ingredients of the offence of robbery with violence. The facts were read to him and the trial magistrate asked the appellant to confirm the correctness’s of the facts and he confirmed and he was given a chance to mitigate before sentencing.in mitigation he stated that he did the offence, he has never committed that offence again and he will not repeat the offence again. From the facts read an offence of robbery with violence was committed as the offender as the appellant



was in the company of others, 4 persons and was armed with a dangerous weapon a sharp axe. The complainant identified the appellant as there was enough light and also he interacted with him. the appellant cut the complainant using an axe .

Analysis And Determination.

9. My duty as the first appellate court is to re-evaluate the evidence tendered at the trial and to draw my own inferences and conclusions bearing in mind that this court did not see nor hear the witnesses (see Njoroge vs Republic (1987) KLR 19 at P.22).
10. I have considered the rival submissions and the trial court's record. The issues raised in the appellants' grounds are the manner in which the plea was taken, and the sentence .
11. The appellant was arrested on 4th December 2014 and appeared in court on 8th December 2014, not on 01.11.2014 as alleged. The charge sheet presented to the court on 8.12.2014 is very clear on this point. He entered a plea on 8.12.2014. The error regarding the date of apprehension appears in the charge sheet presented in court on 3 July 2025. By that time, the appellant had already been dealt with.

1. The appellant claims that the plea of guilty was equivocal. I have examined the manner in which the plea was taken in the court on the 8.12.2014 with a view to establishing whether the plea was unequivocal. Section 207 of the [Criminal Procedure Code](#) (CPC) outlines the manner in which a plea is taken as follows;

1. The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he pleads not guilty, guilty or guilty subject to a plea agreement.
2. If the accused person admits the truth of the charge otherwise than by a plea agreement his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there appears to it sufficient cause to the contrary: Provided that after conviction and before passing sentence or making any order the court may permit or require the complainant to outline to the court the facts upon which the charge is founded.

Provided that after conviction and before passing sentence or making any order the court may permit or require the complainant to outline to the court the facts upon which the charge is founded.

12. When an accused pleads guilty, the trial court must satisfy itself that the plea is unequivocal. The court is required to explain every element of the charge and the consequences of his plea. In the case of Hando s/o Akunaay vs Rex (1951) EACA 307 the court held that:-

“.. before convicting any such pleas, it is highly desirable not only that every element constituent of the charge should be explained to the accused, but that he should be required to admit or deny every such element”

13. From the proceedings of 8.12.2014, the appellant was presented in court on 8.12.2014, the record indicates the following:

Date: 8/12/2014

Coram: Before S.N. Abuya PM

Court Prosecutor: IP Kipsang

Court clerk: Judith



Accused 1,2,3 present

Interpretation Kiswahili and Bukusu for 1st Accused

Court: The substance of the charge and every element thereof has been stated by the court to the accused persons in the language they understand who being asked whether they admit or deny the truth of the charges reply:-

1st Accused: Ni Kweli

2nd Accused: Ni uongo

3rd Accused: Ni uongo

Court: The accused informed that the only sentence for pleading guilty of offence robbery with violence is death and responds:

1st Accused: Ni Ukweli

14. The trial court clearly read and explained the charge to the appellant in the language he understood and then informed the appellant that the only sentence for pleading guilty to the offence robbery with violence and he responded “ Ni Ukweli” (it is true). The facts were read to him, and his response again was “ Ni Ukweli”. Thereafter, the appellant was convicted on his own plea of guilty. The proceedings taken by the trial court during the plea taking were as provided in section 207 of the CPC, thus I am satisfied that all the elements of the charge were read out and explained to the appellant, who pleaded guilty to the charge, the facts were read to him, and again he indicated they are true. The appellant was not confused as alleged in his submissions. The appellant did not raise the issue of a promise made to him by a police officer. He was even given a chance state his mitigation and he stated that, “ I did offence and it's first offence. I have never committed that offence again. I will not repeat this offence again”. The appellant clearly understood the charge and even informed the court he would not repeat it. His submissions are an afterthought. I am satisfied that he understood the nature of the charge that he was facing, and his plea of guilty was unequivocal. The facts read to the appellant was clear that he attacked the complainant with others after they broke into his house. The appellant used an axe and cut the complainant on the head and hands, and they took away his motor bike. The ingredients of the offence o robbery with violence were all proved. His conviction was safe and proper.
15. The appellant is also challenging the sentence passed by the trial court. he submits that the sentence under section 296 (2) of the [Penal Code](#) is unconstitutional and not warranted on plea. Section 348 of the [Criminal Procedure Code](#) stipulates as follows:

“No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence”.
16. The appellant argues that he has completed ten years and charge sheet does not state he was armed with an offensive weapon. In the case of Sigilani -vs- Republic (2004) 2 KLR, 480, the court stated as follows:

“The principle of the law governing charge sheets is that an accused should be charged with an offence known in law. The offence should be disclosed and stated in a clear and unambiguous manner so that the accused may be able to plead to a specific charge that he can understand. It will also enable the accused to prepare his defence.”



17. Section 134 of the [Criminal Procedure Code](#) provides for the ingredients of the charge sheet as follows:

“Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.”

18. The Court of Appeal in the Peter Ngure case referred to the case of Peter Sabem Leitu v R, Cr. App No. 482 of 2007 (UR) and held as follows:

“The question, therefore, is, did this defect prejudice the appellant as to occasion any miscarriage of justice or a violation of his fundamental right to a fair trial? We think not. The charge sheet was clearly read out to the appellant, and he responded. As such, he was fully aware that he faced a charge of robbery with violence. The particulars in the charge sheet made a clear reference to the offence of robbery with violence, as well as the date the offence is alleged to have occurred. These particulars were also read out to the appellant on the date of taking the plea. The fact that PW1 was not personally robbed and did not also witness the robbery did not in any way prejudice the appellant.”

19. Guided by the above cited authorities and the the law, I am of the view that failure to state that the offensive weapon that was used in the charge sheet does not make the charge defective, it was a minor omission and did not occasion any prejudice or occasion any miscarriage of justice to the appellant and the error is curable under Section 382 of the criminal procedure code. The facts read out to the appellant stated that he used an axe to attack the complainant. The appellant admitted the same facts as true.

20. Regarding the death sentence in a case of Robbery with Violence, the appellant contends that its mandatory nature is unconstitutional and not justified on plea. In the case of Nyaranga & 5 others v Republic (Criminal Appeal 181 of 2017) [2024] KECA 786 (KLR) (5 July 2024), the Judgment of the Court of Appeal held as follows;

26. On sentence, the appellants challenged the death sentence on the ground that the sentence was illegal and unconstitutional, and that the trial magistrate did not exercise his direction in sentencing. We appreciate that this was one of the considerations by the Supreme Court in declaring in Francis Kariako Muruatetu & others v Republic [2017] eKLR [Muruatetu1], unconstitutional, the mandatory nature of the death sentence for the offence of murder under section 204 of the [Penal Code](#). However, the appellant cannot find refuge under Muruatetu 1 because the sentence of death imposed upon them is prescribed under section 296(2) of the [Penal Code](#), for the offence of Robbery with violence, and not the offence of murder in regard to which sentence is prescribed under section 204 of the [Penal Code](#).

27. The Supreme Court in Muruatetu & another v Republic; Katiba Institute & 4 others (Amicus Curiae) (Petition 15 & 16 of 2015) [2021] KESC 31 (KLR) (6 July 2021) (Directions) (Muruatetu 2), has given clear directions that its decision in Muruatetu 1 only applied to the mandatory death sentence for the offence of murder under sections 203 as read with section 204 of the [Penal Code](#). The Supreme stated categorically:

“We therefore reiterate that this Court’s decision in Muruatetu did not invalidate mandatory sentences or minimum sentences in the [Penal Code](#), the [Sexual Offences Act](#) or any other statute.”



28. At paragraph 15 in Muruatetu 2, the Supreme Court directed:

“To clear the confusion that exists with regard to the mandatory death sentence in offences other than murder, we direct in respect of other capital offences such as treason under Section 40 (3), robbery with violence under Section 296 (2), and attempted robbery with violence under Section 297 (2) of the Penal Code, that a challenge on the constitutional validity of the mandatory death penalty in such cases should be properly filed, presented, and fully argued before the High Court and escalated to the Court of Appeal, if necessary, at which a similar outcome as that in this case may be reached. Muruatetu as it now stands cannot directly be applicable to those cases.”

29. As the issue of the constitutionality of the mandatory death sentence under Section 296 (2) of the Penal Code is yet to be addressed as recommended by the Supreme Court, the death sentence under section 296(2) of the Penal Code is not unconstitutional as it remains valid under the law. The trial magistrate properly imposed the death sentence upon the appellants and the learned Judge was right in upholding the sentence.

30. I am guided by the above decision; the mandatory death sentence as stipulated in section 296 (2) of the Penal Code is not unconstitutional. The trial court was correct in sentencing the appellant to death. I find no merit in the appeal and dismiss it.

DATED, SIGNED AND DELIVERED AT BUNGOMA ON THIS 11TH DAY OF JULY 2025.

R.E.OUGO

JUDGE

In the presence of:

Festo Nato Said alias John/ Appellant

Miss Matere For the Respondent

Wilkister - C/A

