



**Lobuin alias Lowan v Republic (Criminal Miscellaneous Application
E015 of 2019) [2024] KEHC 736 (KLR) (2 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 736 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL MISCELLANEOUS APPLICATION E015 OF 2019**

**RN NYAKUNDI, J
FEBRUARY 2, 2024**

BETWEEN

PILI LOBUIN ALIAS LOWAN APPLICANT

AND

REPUBLIC RESPONDENT

RULING

- 1 The applicant was charged in the lower court with others with the offence of robbery with violence contrary to section 295 as read with 296(2) of the [Penal code](#).
- 2 The particulars of the offence were that on the 25th of January, 2014 at Kalokol in Turkana Central District within Turkana County, while armed with an offensive weapon namely a knife, the applicant robbed James Loteleng off a cupboard containing six kilograms of Miraa all valued at Kshs. 9,000/= and immediately after such robbery occasioned actual bodily harm to the said James Loteleng.
- 3 The applicant was convicted of the said charge and was imprisoned for life. The applicant filed an application seeking a re-sentencing. I take note that the applicant is not disputing conviction but seeks a lenient sentence.

Analysis and determination

- 4 I have considered the application and all the information available. In such circumstances the court will ordinarily check the legality or propriety or appropriateness of the sentence. The relevant considerations in the proceeding *inter alia*, are the penalty law, mitigating or aggravating factors, and the objects of punishments.
- 5 The offence of robbery with violence is contained in Sections 295 and 296(2) of the [Penal Code](#) as follows:



295. Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of the felony termed robbery.
- 296(2). If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately after the time of robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.”
- 6 Further, In *Jeremiah Oloo Odira v Republic* [2018] eKLR the Learned Judge encapsulated the aforementioned sections and elaborated on the offence of robbery with violence as follows:
- Robbery is committed when a person steals anything capable of being stolen and immediately before or after the theft the person uses actual violence or threatens to use actual violence on the holder of the thing or the property so as to either obtain or retain the stolen thing or so as to prevent or overcome any resistance thereto. Two things must therefore be proved for the offence of robbery to be established: Theft and the use of or threat to use actual violence.
- 7 On the other hand, the offence of robbery with violence is committed when robbery is proved and further if any one of the following three ingredients are established: -
- i. The offender is armed with any dangerous or offensive weapon or instrument, or
 - ii. The offender is in the company of one or more other person or persons, or
 - iii. The offender at or immediately before or immediately after the time of the robbery, wounds, beats, strikes or uses any other personal violence to any person” See *Olouch v Republic* (1985) KLR)

Sentencing

- 8 In the case of *Francis Karioko Muruatetu & Another v Republic*, Criminal Petition No. 15 Of 2015, the Supreme Court held that mitigation was an important facet of fair trial. The learned Judges said;
- It is for this Court to ensure that all persons enjoy the rights to dignity.
- Failing to allow a Judge discretion to take into consideration the convict’s mitigating circumstances, the diverse character of the convicts and the circumstances of the crime, but instead subjecting them to the same (mandatory) sentence, thereby treating them as an undifferentiated mass, violates their right to dignity.”
- 9 In the “*Muruatetu Case*”, the Supreme Court outlined the following guidelines as being applicable when the Court was giving consideration to re-sentencing;
- (a) age of the offender;
 - (b) being a first offender;
 - (c) whether the offender pleaded guilty;
 - (d) character and record of the offender;
 - (e) commission of the offence in response to gender-based violence;



- (f) remorsefulness of the offender;
- (g) the possibility of reform and social re-adaption of the offender;
- (h) any other factor that the Court considers relevant.”

10 I have perused through the trial court’s judgment and I have taken note that the court while sentencing, addressed its mind as follows:

I note the accused remorse and mitigation. I consider state counsel remarks. I consider the provision of the law. The offence is becoming rampant in the region. Accused is sentenced to life imprisonment. Right of appeal explained to accused in Swahili in 14 days.”

11 It is my considered view that the objectives and guidelines of sentencing were not considered by the trial court. I take the minimum sentence to be indicative of the seriousness of the offence. However, in my view the nature of prescriptive minimum sentences does not create mandatory sentences, but preserves the discretion of judicial officers to sentence above and below the ‘standard’ by taking into account a non-exhaustive “check list of aggravating and mitigating factors” which are already largely taken into account by sentencing courts. The offence of robbery with violence attracts a death sentence. I have taken into account the objectives of sentencing and the sentencing guidelines. The life sentence is interfered with and substituted with a sentence of 30 years imprisonment. I have equally considered the provisions of section 333(2) of the CPC and the sentence should run from the date of arrest i.e. 25th January, 2014.

12 Orders accordingly.

DATED AND SIGNED AT LODWAR THIS 2ND FEBRUARY, 2024

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R. NYAKUNDI
JUDGE

