



Lortele v Republic (Criminal Miscellaneous Application E042 of 2023) [2024] KEHC 2403 (KLR) (6 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2403 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL MISCELLANEOUS APPLICATION E042 OF 2023**

RB NGETICH, J

MARCH 6, 2024

BETWEEN

MOMWARENG LORTELE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with 3 counts of Robbery with violence contrary to Section 296(2) of the *Penal Code*. The particulars for Count 1 were that on the 9th day of September, 2019, at about 8:30 a.m along Yatia Loyamoruk road, Chemuro sub-location in Tiaty East Sub- County, within Baringo county, the accused with other not before court while armed with AK 47 riffles robbed Rodgers Cherono cash Kshs. 3450/= and a Sisco mobile phone valued at Kshs 6450/= and at the time of the said robbery wounded the said Rodgers Cherono.
2. The particulars for count II were that on the 9th day of September, 2019, at about 8:30 a.m along Yatia Loyamoruk road, Chemuro sub-location in Tiaty East Sub- County, within Baringo county, the accused with other not before court while armed with AK 47 riffles robbed Douglas Chebii cash Kshs. 2650/= and at the time of the said robbery wounded the said Douglas Chebii.
3. The particulars for count III were that on the 9th day of September, 2019, at about 8:30 a.m along Yatia Loyamoruk road, Chemuro sub-location in Tiaty East Sub- County, within Baringo county, the accused with other not before court while armed with AK 47 riffles robbed Gideon Chelimo cash Kshs. 3500/= and a mobile phone make Nokia valued at Kshs.3000/= all valued at Kshs. 6500/= and at the time of the said robbery wounded the said Gideon Chelimo.
4. The Applicant denied all the charges and the case proceeded for full trial with the prosecution calling 8 witnesses in support of their case. By the judgment delivered on 28th day of September, 2021, the trial



court convicted and sentenced the applicant to 50 years imprisonment in each count which sentences were to run concurrently.

5. The Applicant dissatisfied with the judgment of the trial court, lodged an appeal vide Kabarnet H.C criminal appeal No. E022 OF 2021 which was heard and determined on the 29th day of June, 2023 with the court dismissing the appeal in its entirety.
6. The applicant now seeks review of sentence on ground of mitigating circumstances and exceptional circumstances of the case. He also prays that sentence run from the date of arrest that is from 17th September, 2019.
7. He urged this court to be guided by the decision of the Court of Appeal in Mombasa Criminal Appeal No. 259 of 2012 Ali Abdalla Mwanza Vs Republic on life expectancy and revise the 50 years sentence to a lesser term to facilitate rehabilitation and social re-integration of the Applicant. On jurisdiction, he cited Article 165(3)(b) of *the Constitution* of Kenya, 2010 which empowers this court to revise decisions of subordinate courts under it.
8. The applicant states that he is remorseful, has reformed, first offender and prayed for leniency. That he has successfully enrolled in various rehabilitation programs offered in prison and has attained requisite skills to assist him become law compliant and has fully rehabilitated.
9. The prosecution through Ms Ratemo submitted that this court dealt with the Appeal. She cited the case of *Daniel Oracha Vs. Republic* [2019] eKLR and submitted that this court lacks jurisdiction to handle the application.

Determination

10. The application herein invokes the revisional jurisdiction of this court under Article 165 of *the constitution* which empowers this court in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so satisfied, the law mandated it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law.
11. The applicant herein was sentence to 50 years imprisonment. From the applicant's mitigating factors under circumstances of the offender, the applicant was 35 years old at the time of the offence. I note from the charge sheet that he was arrested on 17th September 2019. He was convicted and sentenced on 12th October 2021. He was therefore about 38 years old at the time of sentence. 50 years imprisonment will therefore take him to 88 years. Expected life span in Kenya is about 70 years. For the applicant to be condemned to serve sentence upto 88 years in my view amount to life imprisonment.
12. I take note of the fact that in Malindi Court of Appeal Criminal Appeal No. 12 of 2021, *Julius Kitsao Manyeso Versus Republic* the court of appeal declared life sentence unconstitutional. The prosecution counsel has argued that this court has no jurisdiction to deal with this matter having determined appeal by the applicant. However I am guided by decision by the Supreme Court where the court considered the issue of review of judgements and orders in *Fredrick Otieno Outa v Jared Odoyo Okello & 3 others* [2017] eKLR where the court stated as follows:-

“...we hold that as a general rule, the Supreme Court has no jurisdiction to sit on appeal over its own decisions, nor to review its decisions, other than in the manner already stated in paragraph (90) above. However, in exercise of its inherent powers, this Court may, upon application by a party, or on its own motion, review, any of its Judgments, Rulings or Orders,



in exceptional circumstances, so as to meet the ends of justice. Such circumstances shall be limited to situations where:

- a. the Judgment, Ruling, or Order, is obtained, by fraud or deceit;
- b. the Judgment, Ruling, or Order, is a nullity, such as, when the Court itself was not competent;
- c. the Court was misled into giving Judgment, Ruling or Order, under a mistaken belief that the parties had consented thereto;
- d. the Judgment or Ruling, was rendered, on the basis of a repealed law, or as a result of, a deliberately concealed statutory provision.”

13. In view of my finding above that the sentence imposed by the trial court amount to life sentence and in view of the fact that the court of appeal has declared life sentence as unconstitutional, the applicant herein has demonstrated circumstances under “d” above. There is change in jurisprudence in respect to life sentence; caselaw has repealed legal provision of life sentence and the applicant is entitled to benefit from repealed law. From the foregoing, I hereby reduce sentence imposed from 50 years to 30 years.

Final Orders: -

14.

1. Sentence of 50 years imprisonment is hereby set aside.
2. Applicant is hereby sentenced to 30 years imprisonment.
3. Period served in remand by the applicant to be computed in sentence under 2 above.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KABARNET THIS 6TH DAY OF MARCH 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

Applicant present.

Ms Ratemo for State.

Kibet, Court Assistant.

