



**Kahiga v Republic (Revision Case E050 of 2023)
[2024] KEHC 7533 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7533 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
REVISION CASE E050 OF 2023
DO CHEPKWONY, J
JUNE 7, 2024**

BETWEEN

JOHN KARIUKI KAHIGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This is a ruling in respect of a Notice of Motion filed on 14th March, 2023 filed pursuant to Articles 49 and 50, both of the Constitution of Kenya, wherein the Applicant is seeking for the least sought sentence in line with the provisions under Articles 20, 23(3), 48, 50(2)(a), 159, 160 and 259(1) all of the Constitution of Kenya, 2010.
2. The application is supported by the Affidavit of the Applicant John Kariuki Kahiga, wherein he has stated that he was charged in Kiambu Criminal No.1308 of 2007 and he appealed in Nairobi HCCR. Appeal No.735 of 2007 and Court of Appeal No. 2 of 2019 in Nairobi. According to the Applicant, he was charged, convicted and sentenced before the Magistrate's Court to suffer death for the offence of robbery with violence. He then lodged an appeal vide High Court No. 735 of 2007 which was heard and dismissed on 18th July, 2013. He filed a second appeal vide the Court of Appeal No. 2 of 2019 which he withdrew on 10th February, 2020.
3. The Applicant contends that he made an application for substitution of death sentence vide Kiambu Misc. Application No.24 of 2019 which was substituted with a sentence of fifty (50) years imprisonment on 30th July, 2020. According to the Applicant the fifty(50)years imprisonment is still harsh, excessive and inhumane. He has urged the court to find that the period he has already served in prison to be sufficient for the offence he was found guilty and convicted for.
4. The Prosecution filed Replying Affidavit of Hellen Ngesa on 21st September, 2023 opposing the application on the grounds that the Applicant was charged with a capital offence of robbery with



violence contrary to Section 295 (2) of Penal Code, whereby he was convicted and given death sentence. He then filed the first appeal in the High Court but it was dismissed meaning the death sentence was upheld. According to M/S Ngesa, counsel for the State, the Applicant utilised the principle in the Francis Muruatetu case and the court agreed to substitute the death sentence with a fifty (50) year sentence. It is the prosecution's argument that the sentence was lawful and commensurate with the gravity of offence the Applicant is charged with.

5. The prosecution contends holds that the applicant has exhausted all channels of appeal and he is using revision tactics to have the court review his sentence without the benefit of the trial court's proceedings. It has therefore argued that the application should be dismissed for being an abuse of the court of process and duplicitous as the sentence was already been reviewed by the Magistrate's Court in Kiambu MCCR No. 24 of 2019.

Analysis and Determination

6. The power to determine an application of this nature is made in exercise of the supervisory jurisdiction of the High Court in regard to criminal cases and is provided for under Sections 362 to 366, all of the *Criminal Procedure Code*. Section 362 provides that:

“[362]. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

7. In this case, the Applicant is questioning the sentence that was meted out against him which he finds to be harsh. The law on the offence of robbery with violence is contained in Sections 295 and 296(2) of the *Penal Code*. Section 295 provides for what amounts to robbery with violence 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.

8. The circumstances to be satisfied for the offence of robbery with violence and prescribed sentence are provided for under Section 296(2) as follows:-

[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.”

9. From the above-cited provision, it is clear that the punishment prescribed for the offence of robbery with violence is death sentence. It is worth-noting that death sentence is still lawful and it is imposed depending on the age of the offender, records of the offender, whether offender pleaded guilty or not, possibility of reform or social adoptability of the offender and the nature of the offence. The trial court reviewed had the sentence and reduced it to fifty (50)years. It is the court's view that this sentence was harsh and excessive as it goes against the principles set out Judiciary of Kenya Sentencing Policy Guidelines retribution, rehabilitation and restorative justice. For that reason, this Court proceeds to revise the sentence that had been meted against the Applicant, sets aside the fifty (50) years sentence and substitute it with thirty (30) years sentence.

It is so ordered.



RULING DELIVERED, DATED AND SIGNED THIS 7TH DAY OF JUNE, 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Gacharia counsel for Respondent

Court Assistant - Martin

