



**Mollet & another v Republic (Criminal Miscellaneous Application E017 & E168 of 2023
(Consolidated)) [2024] KEHC 6934 (KLR) (11 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6934 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL MISCELLANEOUS APPLICATION E017 & E168 OF 2023 (CONSOLIDATED)**

**PN GICHOHI, J
JUNE 11, 2024**

BETWEEN

JUMANNE LOLUSU MOLLEL 1ST APPLICANT

FREDIRICK ODHIAMBO ODHIAMBO 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Jumanne Lolusu Mollet (hereafter referred to in this ruling as the 1st Applicant) was the 2nd accused in Narok Chief Magistrates Court Criminal Case No. 982 of 2013 while Fredirick Odhiambo Odhiambo (hereafter referred to as the 2nd Applicant) was the 1st accused. They were jointly charged with the offence of robbery with violence contrary to section 296 (2) of the [Penal Code](#).
2. The particulars were that on the 3rd day of August 2013 at Ntulele Market , Narok North District Within Narok County of the Republic of Kenya, , jointly with others not before court while armed with offensive weapons namely an imitation of firearm, and a panga , robbed Dominic Yiapan of a mobile phone make Nokia Asha 201 valued at Kshs. 6,999.00 and the time of such robbery used personal violence against the said Dominic Yiapan .
3. They both faced an alternative charge of handling stolen goods contrary to section 332 (2) of the [Penal Code](#) . The particulars were that on the 3rd day of August 2013 at Ntulele Market , Narok North District Within Narok County of the Republic of Kenya, otherwise than in the course of stealing dishonestly retained a mobile phone make Nokia Asha 201 knowing or having reason to believe it as stolen property.
4. Both denied the charges and after hearing, each of them was found guilty of the main charge and sentenced to death. Aggrieved by both conviction and sentence, they appealed to High Court in



- Criminal Appeal No. 35 of 2014. In its judgment dated 21/07/2015, High Court dismissed the appeal on both conviction and sentence.
5. Aggrieved, they appealed to the Court of Appeal in Criminal Appeal No. 91 of 2015. By its judgment dated 02/06/2013, the Court of Appeal dismissed the appeal on both conviction and sentence.
 6. They have both filed separate applications before this Court seeking review of the death sentence on the ground that death sentence has since been declared unconstitutional.
 7. The Respondent filed a Replying Affidavit sworn on 07/05/2024 by James Kihara, the learned Prosecution Counsel. He deponed that the Respondent had no objection to resentencing as the death sentence and life imprisonment cause the convicts to stay in prison perpetually without knowing their fate and this has been considered as cruel and degrading.
 8. However, he urged the Court to be guided by the Judicial Sentencing Policy and consider a custodial sentence as appropriate.

DETERMINATION

9. This Court has considered the two applications, submissions by the 1st Applicant and the Replying affidavit. It is clear that the Applicants have exhausted the appeal process. As at the time two superior Courts handled the appeals, the death sentence was mandatory. However, death sentence has since been declared unconstitutional though not declared unlawful and this Court has jurisdiction to resentence the Applicants.
10. The Court has also considered the mitigating factors by both applicants and that they are remorseful and that each has transformed through the period spent in prison.
11. This Court is further guided by [*Judiciary sentencing Policy*](#) where the objectives of sentence are set out as :-
 1. To punish the offender for his/her criminal conduct in a just manner.
 2. To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 3. To enable the offender reform from his criminal disposition and become a law-abiding person.
 4. To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims, communities' and offenders' needs and justice demand that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
 5. To protect the community by incapacitating the offender.
 6. To communicate the community's condemnation of the criminal conduct.
12. In this matter, it is noted that during the robbery, the Applicants used violence on the complainant. He was cut on the head using a panga. In the circumstances herein, this Court is in satisfied a deterrent custodial sentence is appropriate.
13. Further and pursuant to Section 333 (2) of the [*Criminal Procedure Code*](#), the period spent in custody pending trial should be taken into account while commuting the said custodial sentence. In this case, the court record shows that they remained in custody from the date of arrest in Narok Chief Magistrates Court Criminal Case No. 982 of 2013.



14. In conclusion, the two consolidated applications are allowed in the following terms:-

1. The death sentence on each of the Applicants be and is hereby substituted with a sentence of thirty- five (35) years imprisonment.
2. The said sentence shall run from the date of arrest being 03/08/2013.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 11TH DAY OF JUNE, 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

Jumanne Lolusu Mollel - 1st Applicant

Fredirick Odhiambo Odhiambo- 2nd Applicant

Mr. Kihara for Respondent

Ruto- Court Assistant

