



REPUBLIC OF KENYA



KENYA LAW
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**Kiberenge v Republic (Criminal Revision E090 of 2023)
[2024] KEHC 8970 (KLR) (23 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8970 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL REVISION E090 OF 2023**

**J WAKIAGA, J
JULY 23, 2024**

BETWEEN

COLLINS MURIUKI KIBERENGE APPLICANT

AND

REPUBLIC RESPONDENT

(Arising from conviction and sentence of Principal Magistrate's Court at Kigumo by Hon. A. Mwangi P.M dated 10th July 2019 in Criminal Case No 1428 of 2018)

RULING

1. By a Notice of Motion under Section 333(2) 362 and 364 of CPC and Article 50(2) (p) of the Constitution, the Applicant moved the Court for review of the sentence mated upon the same on account of the emerging jurisprudence on minimum and maximum mandatory sentences.
2. In support of the application, he swore an affidavit in which he deposed that he was currently serving a thirty (30) years sentence for the offence of robbery with violence from which he appealed to this Court in Muranga High Court Criminal Appeal No 37 of 2019, which was dismissed on 21st April 2022.
4. His application was supported by the decisions of the Superior Courts in Joseph Kaberia Kabinga v Republic [2018] eKLR, Paul Njoroge Ndungu v Republic [2021] eKLR and Titus Owino Okello v Republic [2021] eKLR.
5. When the application came up for hearing before me, the Applicant who was unrepresented submitted that he had been in custody for a period of four years on a robbery with violence charge where he is alleged to have robbed the victim of a motor vehicle. It was his contention that he did not assault the victim.



6. Mr Mwangi for the state submitted that the Applicant having lodged an appeal to this Court, the only thing the Court can do is to consider the period served before conviction under the provisions of Section 333(2) of the CPC.

Determination

7. The place of the minimum and maximum mandatory sentence in Kenya is at a state of confusion starting with the supreme Court's determination in *Muruatetu 1* where the Court held that the mandatory nature of death sentence in respect of those charged with murder was unconstitutional and issued directions on what became known as re-sentence hearing, which they clarified in *Muruatetu 2* to be applicable to only murder cases.
8. As regards the offence of robbery with violence under which the Applicant was charged at the lower Court, this Court sitting as a constitutional bench in *Joseph Kaberia Kabinga & 11 others v AG* [2016] eKLR held that all the persons charged and convicted of the offence of robbery with violence and attempted robbery with violence under Section 296(1) (2) and 297(1) (2) of the Penal Code did not have the full benefit of the right to fair trial as provided under Article 50(2) of the Constitution.
9. The Court proceeded to state as follows: “ we are of the considered view that the Sections of the Penal Code upon which the Petitioners were charged and convicted in so far as they did not allow the possibility of differentiation of the gravity of the offences in a graduated manner in terms of severity or attenuation and failure to give an opportunity for the consideration for the circumstances of the offender , render those sections i.e. Section 204, 296(2) and 297(2) of the Penal Code deficient in terms of assisting those administering the justice system to be able to charge the offenders with the appropriate offences that will ultimately attract a proportionate sentence. It is in that content that the complainant by the Petitioners that the imposition of the death sentence as a one stop contravened their right to fair trial.”
10. It is clear that the Section under which the Applicant was charged in and convicted was rendered unconstitutional by this Court and therefore the conviction and sentence thereon despite the same having been confirmed by this Court on appeal cannot stand.
11. I have looked at the item robbed of the complainant and the nature of the violence meted against the same as per the evidence of PW1 and the fact that the Applicant was not afforded an opportunity to mitigate and the fact that he was a first offender and find that the facts as proved discloses an offence of robbery and being guided by the Courts determination in the case of *Joseph Kaberia Kainga* (supra) the sentence of thirty years is commuted to ten years from 15th day of August 2018.
12. The Applicant is entitled to remission if any on the said sentence and it is ordered.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 23rd DAY OF JULY 2024

J. WAKIAGA

JUDGE

In the presence of;-

Mr. Mwangi for the State

Appellant virtually in Nyeri

Quinteen – Court Assistant

