



REPUBLIC OF KENYA



Mutembei v DPP (Petition E026 of 2023) [2023] KEHC 3350 (KLR) (20 April 2023) (Judgment)

Neutral citation: [2023] KEHC 3350 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
PETITION E026 OF 2023
TW CHERERE, J
APRIL 20, 2023**

BETWEEN

TARASISIO MUTEMBEI PETITIONER

AND

THE DPP RESPONDENT

JUDGMENT

1. Petitioner was convicted of robbery with violence and sentenced to death on January 16, 2014. His appeal to the High Court vide HCCr.Appeal No 5 of 2014 was dismissed.
2. Petitioner seeks resentence on the ground that he was sentenced to a mandatory sentence.
3. Ms. Rita for the DPP opposed the application on the grounds that the victim suffered serious injuries and Petitioner was armed with dangerous weapons during the robbery.
4. The aggravating factors in this matter are that the victim suffered serious injuries and was treated as an inpatient for one month.
5. In the South African case of *S vs Mchunu and another* (AR24/11) [2012] ZAKZPHC 6, Kwa Zulu Natal High Court held that sentencing vests a discretion in the trial court to consider what a fair and appropriate sentence should be.
6. Another South African case of *S v Scott-Crossley* 2008 (1) SACR 223 (SCA) at para 35 set out the purpose behind a sentence as follows:

‘Plainly any sentence imposed must have deterrent and retributive force. But of course one must not sacrifice an accused person on the altar of deterrence. Whilst deterrence and retribution are legitimate elements of punishments, they are not the only ones, or for that matter, even the over-riding ones. . . [i]t is true that it is in the interests of justice that crime should be punished. However, punishment that is excessive serves neither the interests of justice nor those of society.’



7. Flowing from the foregoing, I find that it would not serve any meaningful purpose to confine Petitioner to a life of hopelessness. I am therefore persuaded to resentence petitioner to a determinate sentence.
8. In resentencing the petitioner, I have taken into account the provisions of section 333(2) of the *Criminal Procedure Code* and the fact that he might have spent some time in custody from the date of his arrest to the date of conviction and he has already served over 9 years from the date of conviction.
9. In the end, petitioner is thus resented to serve 20 years from the date of his conviction on January 16, 2014.
10. It is hoped that petitioner will undertake some form of training as a way of reformation so that he can easily integrate with the community once released.

DELIVERED AT MERU THIS 20TH DAY OF APRIL 2023

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Kinoti

Petitioner - Present in person

For the State - Ms. Rita (PC- 1)

