



**Wabomba v Republic (Criminal Appeal E091 of 2022)
[2023] KEHC 17367 (KLR) (15 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17367 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL APPEAL E091 OF 2022
JRA WANANDA, J
MAY 15, 2023**

BETWEEN

DANIEL KIPTOO WABOMBA APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The appellant was charged in Eldoret Chief Magistrate's Court Criminal Case No. E481 of 2020 with the offence of robbery with violence contrary to Section 296(2) of the *Penal Code*.
2. The particulars of the offence were that on 8/11/2020 at Murukusi village, Lugari sub-county within Kakamega county, jointly with another not before Court, he robbed Alex Nabutse a motorcycle registration number KMEU598H TVS STAR valued at Kshs 100,000/- and Kshs 1,400/- cash and at or immediately after the time of such robbery, wounded the said Alex Nabutse.
3. The Appellant pleaded not guilty and the matter then proceeded to full trial. The prosecution presented 4 witnesses. On his part, the Appellant was the only defence witness.
4. PW1 was the complainant. He testified that he operated a boda boda (a motorcycle rider), he was employed by one Victor Mwashu for whom he had worked for 3 years, the motorcycle registration number was KMEU598H TVS STAR, it was red in colour, on 8/11/2020 he was in Kipkaren when the Appellant came to him and posed as a customer, the Appellant was with another person, the Appellant asked PW1 to take them to Murgosi dispensary, on the way, at a sugarcane plantation, the Appellant asked PW1 to stop as the Appellant claimed that he wanted to call his workers, the Appellant then took a metal and hit PW1 who fell unconscious, on regaining consciousness, PW1 realised he was alone and the Appellant was missing, the other person had a knife, it was the Appellant who hit PW1, he reported to his employer Victor who took him to hospital, they made a report at Lumakanda police station, he saw the Appellant well and that they had negotiated the price at Kshs 100/-. He then identified the



treatment notes and P3 form and testified further that the other suspect stabbed him on the eye, PW1's fellow boda boda riders began pursuing the suspects, after arrest of the Appellant, PW1 identified him, the Appellant had a purple mask, the Appellant was then arrested and taken to Turbo, the Appellant had a black sack with a metal. PW1 then identified the alleged metal rod and black bag and stated that the motorcycle was also recovered, the other suspect managed to flee, the motorcycle was taken to the police station and photographs were taken. He identified the photographs and a copy of the log-book and stated that he was there when the suspect was escorted to the police station. He then identified the Appellant in Court and stated that the motorcycle was valued at Kshs 100,000/- and that they also took Kshs 100/- from him.

5. In cross-examination, PW1 insisted that the Appellant was among the assailants, he could not tell the exact time the Appellant was arrested, PW1 knew the Appellant on the said date, the Appellant was with another person, the Appellant was found with the motorcycle and was arrested at Kwa Sajei, he did not know that the Appellant was a thief, PW1's colleague called PW1 to confirm whether it was the Appellant, the Appellant was the one riding, the other suspect fled, PW1 denied that he had ever asked for money from the Appellant.
6. PW2 was one Victor Mwashii. He testified that he is a boda boda operator, on 8/11/200 Sunday, he was selling fuel at Talan petrol station when he received a call from someone informing him that his rider Moris (PW1) had been cut, the motorcycle was HLX TVS KMEU 598H, he recorded his statement with the police station, the rider is called Alex but they also call him Moris or Mumo, when PW2 inquired, PW1 told him that that he had carried 2 passengers who attacked him, PW1 was taken to Lumakanda district hospital, they made a report to Lumakanda police station, the motor cycle had a tracker, they were issued with a P3 Form, PW1 had a cut on the eye and swellings on the neck and head, PW2 tracked the motor cycle, they traced it to Kasochei, he informed fellow operators, they began searching and chasing the motorcycle, on reaching Turbo they traced it heading to Jua Kali, they then switched it off, they found 2 suspects with the motorcycle, the suspects told PW2 and his group that the motorcycle did not have fuel, shortly the police came with PW1 to identify the Appellant, the other suspect fled, the Appellant had a black bag with green slippers on his back, the Appellant was escorted to Turbo police station, on opening the bag, it was found to have a mask and a cap inside. PW2 then identified the Appellant in Court and stated that he did not know the Appellant before, he took the log-book to the police station where a photocopy and photographs were taken. In cross-examination, he agreed that he did not witness the incident, it was about 3.20 pm, they followed the Appellant with motorcycles, he took PW1 for first aid, PW1 came later and identified the Appellant
7. PW3 was Inspector John Rotich. He testified that he was attached to Lumakanda police station, he was the investigating officer in the matter, on 8/11/2020 he was at the office when PW1 and other boda boda riders came to report that PW1 was at Kipkaren market when 2 people came and requested to be taken to Murgusii, they agreed that the price will be Kshs 200/-, along the way, on reaching a sugarcane plantation, the customers asked to stop claiming that they wanted to call someone, they then attacked PW1 by hitting him on the head, it was on the main road, other riders found him lying beside the road, they called his boss, Victor who came to the scene, they did not find the motorcycle, it was TVS KMEU 598, red in colour, the motorcycle had a tracker, the company tracked it, at Kosichei the motorcycle was switched off, the Appellant was found by members of public, officers on patrol came to the scene and took away the Appellant to Turbo police station, PW1 recorded his statement, the log book and P3 Form were supplied, scene of crime photographs were taken, the Appellant was charged, PW1 identified the Appellant at the police station, the Appellant had a black bag, a metal rod and a mask with the caption "father", PW3 then produced the said items in Court together with the photographs and copy of log-book. In cross-examination, he agreed that he was not at the scene,



the Appellant was found in the act, he also recorded the Appellant's statement, the money was not recovered, it was around 3.45 pm.

8. PW4 was Maiyo Samuel Helulei. He testified that he is a clinical officer attached to Lumakanda County hospital, he has a diploma in clinical medicine and surgery, he referred to a P3 Form for PW1 which was filled on 9/11/2010, PW1 had blood-stains on his t-shirt, he alleged that he had been beaten by 2 people known to him, he had injuries on the neck and head, the injuries had taken some hours, there was a cut caused by a blunt object, PW4 stitched and dressed the wounds and gave antibiotics, he rated the injuries as "harm". He then produced the P3 form, prescription Form and treatment notes. In re-examination, he stated that he could not recall the time that PW1 came to hospital.

Defence evidence

9. At the close of the prosecution case, the trial Court ruled that the Appellant had a case to answer and put him to his defence.
10. The Appellant then testified as DW1. He gave unsworn evidence. He stated that the offence was not true, on 8/11/2020 he was in Turbo, it was a Sunday, he keeps his clothes in a store at Turbo and on that day, he gone to check on the clothes, he took a motorcycle to Jua kali and on reaching Kaschei fuel ran out, the rider started pushing the motorcycle towards the petrol station. suddenly he saw the rider running towards the maize plantation and people chasing him, he was called by the people who asked him where he was coming from, he told them that he had hired the motorcycle, the area sub-chief called the police who came and arrested the Appellant, he told the police that he was a mitumba (used clothes) seller, he took them to the store where he had kept the clothes, he was released to go home, the following day he was called back to the station, his fingerprints were taken and he was then charged, he denied committing the offence.

Judgement of the trial court

11. Upon considering the testimonies of the witnesses and the evidence tendered in Court, on 6/09/2022, the trial magistrate convicted the Appellant and after mitigation, sentenced him to life imprisonment.

Grounds of Appeal

12. Being aggrieved with the conviction and sentence, the Appellant instituted this Appeal *vide* the Petition filed in Court on 14/09/2022. 8 grounds were preferred as follows (verbatim):
 - i. That the learned trial magistrate erred in both law and fact by not observing that there was no positive identification since there was no identification parade that was conducted.
 - ii. That the trial court failed to recognize that the prosecution did not prove its case beyond any reasonable doubt.
 - iii. That the trial magistrate erred in law and fact by shifting the burden of proof on the appellant herein.
 - iv. That the trial magistrate erred in law and in fact by not complying with the provisions of section 146 and 150 of the CPC by not summoning essential witnesses to come tender their evidence.
 - v. That the ingredients of robbery with violence contrary to section 296(2) of the *penal code* was not proved to the required standards as outlined in law
 - vi. That the prosecution's case was full of contradictions, irregularities and inconsistencies.



- vii. That the trial court failed to consider (my) mitigation and proceeded to convict the appellant to serve life imprisonment while knowing that the same was unconstitutional.
- viii. That more grounds will be adduced during the hearing and determination of this appeal.

Hearing of the Appeal

13. It was thereafter directed that the Appeal be canvassed by way of written submissions. The Appellant's Submissions were filed on 27/1/2023. On its part, the Respondent filed its Submissions on 20/03/2023 by Prosecution Counsel Meshack K. Rop.

Appellant's Submissions

14. As aforesaid, the Appellant was sentenced to life imprisonment. He submitted that the sentence imposed was mandatory in nature, in light of the now famous Supreme Court Muruatetu decision, mandatory maximum sentences are unconstitutional as they robbed offenders of their fundamental rights and freedoms enshrined in the constitution, these mandatory sentences deprive the Courts of their independence and discretionary powers to make their own independent decisions, the sentence amounted to excessive punishment and was too harsh, the sentence was meant to rehabilitate him, the question to be asked is whether one can be rehabilitated without being given a second chance to demonstrate his reformed character? He cited the case of *S vs Mchunu* AR24/11 (2012) ZAKZPHC 6 from the Kwazulu Natal High Court. He further cited Article 50(2)p of the Constitution on the right to a fair trial and also Article 25(c).
15. On proof of the prosecution case, the Appellant submitted that the evidence of the prosecution was marred with irregularities and contradictions.

Respondent's Submissions

16. Learned Counsel for the State submitted that the prosecution discharged its duty of proving the case beyond reasonable doubt, evidence was tendered by first hand witnesses, it overwhelmingly implicated the Appellant, nothing was tendered to shake it, what constitutes the offence of robbery with violence was well captured by the Court of Appeal in the case of *Oluoch vs Republic* (1985) KLR, the complainant (PW1) was able to identify the Appellant because the complainant took time to negotiate with the Appellant the fare to ferry him which was then agreed at Kshs 100/-, there was therefore no need to carry out an identification parade as the complainant recognized the accused very well, the evidence of all the witnesses corroborated each other, they were able to prove that the accused was robbed by the Appellant jointly with another and that in the course of that robbery the Appellant sustained injuries, the complainant (PW1) narrated how the Appellant, together with another not before Court, while armed with a metal rod and a knife, robbed him of Kshs 1,400/- and the motorcycle, the complainant stated that he sustained injuries and he reported to Victor (PW2) who took him to hospital, he identified the P3 form and treatment notes, PW1 also informed the Court that the motorcycle was recovered from the Appellant, photographs of the motorcycle were taken at the police station, he was able to identify items recovered from the Appellant which were a mask, metal rod and a black bag, he further identified the photographs of the motorcycle and a copy of the log book.
17. Counsel urged that PW2 told the Court that he received a call that his rider of his motor cycle (PW1) had been cut and shortly afterwards, PW1 came while crying and bleeding, PW1 informed him that he had carried 2 passengers who attacked him and that he had a cut on the eye and a swelling on the head, they made a report to the police where they were issued with a P3 form, he is the one who took PW1 to hospital, he further told the Court that his motorcycle had a tracker and it is with the help of the



tracker that they were able to arrest the Appellant, he was able to identify the items that were recovered from the Appellant, he also identified the photographs of the motorcycle and produced the log-book, he stated that the Appellant's accomplice managed to escape, this evidence corroborated that of PW1 by proving that PW1 was attacked and robbed of the motorcycle, PW3 narrated how the Appellant was found by members of the public, officers on patrol went to the scene and took the Appellant to the police station, recorded witness statements and called for the motorcycle's logbook and P3 Form and that he then produced the mask, metal and black bag as exhibits in evidence.

18. Counsel submitted further that PW5, the clinical officer, corroborated PW1's evidence by proving that the Appellant used actual violence on PW1, he stated that the complainant had injuries on the neck and head and he produced the P3 Form, prescription form and treatment notes. Counsel cited the case of *Eric Otieno Arum v Republic* KSM CA Criminal Appeal No. 85 of 2005 (2006) eKLR on the doctrine of "recent possession" and submitted that there was sufficient proof that the PW1 was working for PW2 as a rider, there is also sufficient proof that the motor cycle was stolen from PW1 by the Appellant, since it was proved that he was found with the motorcycle stolen from PW1, he committed the offence of robbery with violence against PW1.
19. On the sentence, Counsel submitted that the trial Court meted out the sentence of life imprisonment, the mandatory sentence provided by law for the offence of robbery with violence is death sentence, the trial Court took into account everything that was urged before it by the Appellant before passing out its sentence, it did not disregard any material factor nor did it take into account any matter immaterial, the trial Court considered all the relevant facts it ought to have considered before sentencing. The sentence was therefore lawful and proper.

Analysis & Determination

20. This Court's duty as an appellate Court was stated in *Okeno v. Republic* [1972] EA 32 to be as follows:

"The first appellate court must itself weigh conflicting evidence and draw its own conclusions (Shantilal M. Ruwala -V- R. (1975) EA 57). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses."
21. Upon consideration of the Record, Petition and submissions of the parties, I find the following to be the issues that arise for determination;
 - i. Whether the prosecution proved the case of robbery with violence to the required standard.
 - ii. Whether the sentence of life imprisonment imposed was excessive or unconstitutional.
22. I now proceed to analyze and determine the issues.

i. Whether the prosecution proved the case of robbery with violence to the required standard

23. It is trite law that the burden of proof in criminal cases is one of beyond reasonable doubt. It follows therefore that the prosecution was required to prove beyond reasonable doubt that the Appellant committed the offence.
24. The offence of robbery is defined under section 295 of the *Penal Code* as follows;



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.

25. On its part, Section 296(2) of the Code defines “robbery with violence” and sets out the sentence to be meted out to the offender as follows;

(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 before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.

26. In *Jeremiah Oloo Odira v Republic* [2018] eKLR, Mrima J elaborated as follows:

“Robbery is committed when a person steals anything capable of being stolen and immediately before or after the theft the person uses actual violence or threatens to use actual violence on the holder of the thing or the property so as to either obtain or retain the stolen thing or so as to prevent or overcome any resistance thereto. Two things must therefore be proved for the offence of robbery to be established: Theft and the use of or threat to use actual violence.

On the other hand, the offence of robbery with violence is committed when robbery is proved and further if any one of the following three ingredients are established: -

- i. The offender is armed with any dangerous or offensive weapon or instrument,
- or
- ii. The offender is in the company of one or more other person or persons, or
- iii. The offender at or immediately before or immediately after the time of the robbery, wounds, beats, strikes or uses any other personal violence to any person”

27. Similarly, in *Maritim v Republic* (Criminal Appeal E024 of 2021) [2022] KEHC 10256 (KLR) (6 July 2022) (Judgment). F Gikonyo J held as follows;

The three elements of the offence of robbery with violence under section 296(2) of the *Penal Code* are, however, to be read disjunctively and not conjunctively. Thus, proof of one element beyond reasonable doubt founds an offence of robbery with violence

28. In this instant case, the evidence of PW1 (the complainant) was that PW1 was a motorcycle taxi operator, the Appellant, while accompanied by another suspect, approached him and posed as customers, they then hired PW1 to ferry them from one spot to another. As they were heading to the destination, the Appellant instructed PW1 to stop but then unleashed a metal rod which he used to attack PW1 who then lost consciousness. Upon regaining consciousness, PW1 realized that both the motorcycle and the Appellant were missing. He testified that he identified the Appellant after the Appellant was arrested. He also testified that the Appellant had a purple mask. PW2, Victor Mwash, was the owner of the motorcycle that was stolen from PW1. He testified that the motorcycle had a tracker which they used to track it to Kosachei. Upon tracing it they eventually ended up at Jua Kali and switched off the motorcycle using the tracker. They then found 2 suspects in possession of the motorcycle and the accused was arrested, the other suspect fled. When arrested, the Appellant was in



possession of a black bag which was found to have a mask and a cap. PW3 (the investigating officer) testified that he picked up the accused from Turbo police station after he had already been arrested by members of the public who had handed the Appellant over to officers on patrol. He stated that the accused was identified by PW1 at the police station and that he had a bag with a metal rod and a mask with the caption “father”. In cross examination, PW3 confirmed that the accused was found in possession of the motorcycle.

29. The Appellant challenged the trial Court’s finding on his identification as the perpetrator. On identification, the Court of Appeal in *Wamunga v. Republic* (1989) KLR 424 at 426 stated as follows:

“Where the only evidence against a defendant is evidence of identification or recognition, a trial court is enjoined to examine such evidence carefully and to be satisfied that the circumstances of identification were favourable and free from possibility of error before it can safely make it the basis of a conviction.”

30. Similarly, in *R. vs. Turnbull & Others* [1973] 3 All ER 549, it was held that:

“...The Judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have with the accused under observation? At what distance: In what light: Was the observation impeded in any way? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance?”

31. I have considered the evidence of the witnesses and find that there is sufficient corroboration on the Appellant being placed at the scene of crime and also his role and participation thereon.

32. Further, the Appellant being found in possession of the motorcycle was the final nail on the coffin in determining whether indeed, he was the perpetrator. This is the doctrine of “recent possession” which was commented upon in *Isaac Ng’anga Kabiga alias Peter Ng’ang’a Kabiga v. Republic* Cr App. No. 272 of 2005(UR) as follows:

[Recent possession] there must be positive proof:

- i. that the property was found with the suspect;
- ii. that the property is positively the property of the complainant;
- iii. that the property was stolen from the complainant;
- iv. that the property was recently stolen from the complainant.

33. The fact that the Appellant was found in possession of the stolen motorcycle fully corroborated the evidence of the prosecution witnesses. Further, PW2 who was PW1’s employer, provided evidence that he was the owner of the motorcycle by producing a copy of the log book.

34. In his defence before the trial Court, the Appellant alleged that he had hired a motorcycle rider at Turbo to ferry him to Jua Kali, that when they reached Kasochei, the motorcycle ran out of fuel, the rider began pushing it, suddenly a crowd approached accusing him of stealing the motorcycle. In light of the evidence given by the prosecution witnesses and considering the Appellant’s failure to respond



- to all the other evidence that implicated him in the crime, I do not find his explanation plausible or truthful at all.
35. On whether an identification parade should have been held, I agree with the Learned State Counsel that the complainant (PW1) was able to identify the Appellant because he took time to negotiate the fare with the Appellant which was then agreed at Kshs 100/-, there was therefore no need to carry out an identification parade as the complainant recognized the accused.
36. In his Petition of Appeal, the Appellant alleged that the trial magistrate erred by shifting the burden of proof to him. He however did not demonstrate how the Court allegedly did so. He also alleged that the trial magistrate erred by not complying with the provisions of section 146 and 150 of the Criminal Procedure Code by not summoning essential witnesses to come and tender their evidence. He however has not identified which are these witnesses that he wanted to be summoned. He further alleged that the prosecution's case was full of contradictions, irregularities and inconsistencies. Again, he did not at all elaborate.
37. On whether the Appellant was armed with "a dangerous weapon", it was PW1's testimony that he was hit by the Appellant with a metal rod causing PW1 serious injuries. Indeed, the evidence on record proves that the Appellant was found in possession of such metal rod and which PW1 identified. The trial Court was therefore right in finding that the Appellant was in possession of "a dangerous weapon". Further, the testimony of the assault was corroborated by the medical evidence and testimony of PW4, the clinical officer who examined PW1 after the attack and classified the injuries as "harm".
38. In the circumstances, I am satisfied that the prosecution proved the case beyond reasonable doubt.

ii. Whether the sentence of life imprisonment imposed was excessive or unconstitutional

39. The Appellant has incorrectly alleged that the life imprisonment imposed upon him is the mandatory maximum sentence under the law.
40. On the sentence to be imposed upon conviction on the charge of "robbery with violence", Section 296(2) of the Penal Code, provides as follows:
- “(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 before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.”
41. The prescribed mandatory maximum sentence for the offence of "robbery with violence" as per the provisions of section 296(2) of the Penal Code is therefore the death sentence. However, it is now generally agreed that in spite of the mandatory language employed by the statute, the Courts nevertheless still possess discretion in sentencing of offenders convicted of the offence. For instance, in James Kariuki Wagana vs Republic [2018] eKLR, Prof. Ngugi J observed that while the death sentence is the maximum penalty for both murder and robbery with violence, the Court has the discretion to impose any other penalty that it deems fit and just in the circumstances. He further observed that the death sentence should be reserved for the highest and most heinous levels of robbery with violence or murder.
42. I am also guided by the Court of Appeal decision of Paul Ouma Otieno -Vs- Republic (2018) eKLR where the Court substituted the death sentence for a similar offence with a sentence of 20 years



imprisonment. Further, in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR) the Supreme Court of Kenya declared the mandatory death sentence unconstitutional.

43. The Appellant is therefore wrong to allege that the life imprisonment imposed upon him is the mandatory maximum sentence under the law. It is not, the maximum sentence is death. By handing life sentence instead of the prescribed death penalty, the trial magistrate therefore exercised her discretion.

44. Regarding sentence, Majanja J, (quoting the now famous Muruatetu 1 case) in *Michael Kathewa Laichena & another v Republic* [2018] eKLR, stated as follows:

“The Sentencing Policy Guidelines, 2016 (“the Guidelines”) published by the Kenya Judiciary provide a four tier methodology for determination of a custodial sentence. The starting point is establishing the custodial sentence under the applicable statute. Second, consider the mitigating circumstances or circumstances that would lessen the term of the custodial sentence. Third, aggravating circumstances that will go to increase the sentence. Fourth, weigh both aggravating and mitigating circumstances. Since the Guidelines did not take into account the fact that the death penalty would be declared unconstitutional, the Court in the Muruatetu Case (Supra, para. 71), considered that in re-sentencing in a case of murder, the following mitigating factors would be applicable;

- (a) age of the offender;
- (b) being a first offender;
- (c) whether the offender pleaded guilty;
- (d) character and record of the offender;
- (e) commission of the offence in response to gender-based violence;
- (f) remorsefulness of the offender;
- (g) the possibility of reform and social re-adaptation of the offender;
- (h) any other factor that the Court considers relevant.

45. Applying these guidelines, the Court of Appeal has on several occasions reduced sentences imposed on convicts for the offence of robbery with violence. For instance, in *Wycliffe Wangusi Mafura v Republic* ELD CA Criminal Appeal No. 22 of 2016 [2018] eKLR, the Court of Appeal set aside a death sentence and substituted it with a prison sentence of 20 years. The Court noted that the robbery was at a Mpesa shop. The Court then considered the circumstances of how the robbery was committed and took into account the fact that although the Appellant was armed with a gun, with which he threatened the Mpesa attendant, he was subdued before he used the gun.

46. Similarly, in *Paul Ouma Otieno alias Collera and Another v Republic* (*supra*), the Court of Appeal set aside a sentence of death and substituted it with a sentence of 20 years imprisonment. The Court observed that the circumstances were aggravated by the fact that the Appellants were armed with guns.

47. In this matter, I consider that the Appellant was armed with a metal rod which he used to hit PW1. Although still a dangerous and lethal weapon, I would not equate a metal rod in the same league as a gun or even a panga (machete). I also take into account the fact that the motorcycle was immediately recovered from the Appellant just a short distance away

48. After considering all the above mitigating factors, I reduce the sentence from life imprisonment to a prison term of 20 years.



Final Orders

49. The upshot is therefore as follows:

- i. The Appeal on conviction is hereby dismissed.
- ii. On the sentence, the sentence of life imprisonment imposed by the trial Court is hereby set aside and substituted with a prison sentence of twenty (20) years.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 15TH DAY OF MAY 2023

WANANDA J. R. ANURO

JUDGE

