



REPUBLIC OF KENYA



**Muthoki v Republic (Criminal Appeal E040 of 2021)  
[2023] KEHC 20710 (KLR) (Crim) (17 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20710 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL  
CRIMINAL APPEAL E040 OF 2021**

**LN MUTENDE, J**

**JULY 17, 2023**

**BETWEEN**

**PETER KYALO MUTHOKI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Appeal against the sentence in Criminal Case No. 2143 of 2017 at the Chief Magistrate's Court Makadara by Hon. Stephen Jalang'o - PM on 17th May, 2019)*

**JUDGMENT**

1. Peter Kyalo Muthoki, the appellant, was charged with the offence of robbery with violence contrary to Section 295 as read with Section 296(2) of the [Penal Code](#).
2. Upon being taken through full trial he was convicted and sentenced to serve ten (10) years imprisonment.
3. Aggrieved, he proffered an appeal. Subsequently, he abandoned the appeal against conviction and opted to pursue the appeal against the sentence. At the hearing, he prayed for reduction of the sentence imposed.
4. The State through learned Counsel Mr. Mutuma opted to leave it to the court to reach a decision.
5. The duty of this court is to reconsider what transpired at trial (See *Okeno vs. Republic* (1972) EA 32).
6. Section 296(2) of the penal Code provides thus:

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.

7. This was a case where the complainant withdrew money, Kshs. 700,000/- from the bank and while he walked along Sheikh Karume Street, he was attacked by the appellant and three (2) others who held his neck and snatched away the bag that contained the money and a cell phone, items that were never recovered. Only the appellant was arrested.
8. The appellant was sentenced to serve ten (10) years imprisonment in 2019, presumably at a time when courts assumed they had the jurisdiction to so act following the decision of *Muruatetu vs. Republic* (2017) eKLR where the Supreme Court held that death sentence was unconstitutional.
9. Subsequently in *Francis Karioko Muruatetu & Another vs. Republic* (2021) eKLR, the Supreme Court clarified that the decision of *Muruatetu* (2017) eKLR was only applicable to murder cases.
10. Notably no cross appeal was filed by the State. An appellate court can only interfere with a sentence meted out by the trial court if it acted on wrong principles or where the sentence is manifestly excessive. In the case of *Bernard Kimani Gacheru vs. Republic* (2002) eKLR the Court of Appeal stated that:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with the sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist (emphasis added).”

11. It is apparent that the sentence meted out was very lenient. That being the case, I have no reason to interfere with it. In the result the appeal is unmeritorious. Accordingly, it is dismissed.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 17<sup>TH</sup> DAY OF JULY 2023.**

**L. N. MUTENDE**

**JUDGE**

**IN THE PRESENCE OF:**

Appellant

Mr. Kiragu for ODPP

Court Assistant - Mutai

