



REPUBLIC OF KENYA



**KENYA LAW**  
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**Waweru v Republic (Criminal Appeal E012 of 2020)  
[2023] KEHC 20468 (KLR) (19 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20468 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL APPEAL E012 OF 2020  
HK CHEMITEI, J  
JULY 19, 2023**

**BETWEEN**

**ISAAC WAWERU ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an Appeal from the Judgement of Hon. M. Nyakundi (PM) dated 28th May 2015 in Criminal Case No. 2720 of 2013 at Nakuru Chief Magistrate's Court)*

**JUDGMENT**

1. The appellant was convicted for the offence of robbery with violence and sentence to suffer death vide criminal case no 2720 of 2013.
2. His appeal to this court vide appeal no. 145 of 2015 was dismissed on 3<sup>rd</sup> November 2017 and the sentence of death upheld.
3. The applicant taking advantage of the decision by the Supreme Court of Kenya in the now famous Muruatetu case applied to this court for resentencing vide criminal application number 270 of 2018 and on 25<sup>th</sup> May 2020 Justice Prof Ngugi (as he then was) directed that the application be heard by the lower court.
4. The lower court under miscellaneous criminal case no. 163 of 2020 set aside the sentence of death imposed against the appellant and substituted it with a prison term of 30 years from the date of the trial court judgement.
5. The appellant was dissatisfied with the said decision and has appealed to this court solely on one ground that the same was excessive and not commensurate to the circumstances of the robbery incident or the offence.



6. The court directed the parties to file written submissions which they have complied. The appellant basically submitted that the court ought to have taken into consideration the mitigating circumstances namely that in the said robbery incident there was no injury or fatalities, that the items stolen were recovered, that he did so while in is youthful age, that he has since reformed and has undertaken various courses while in prison.
7. He therefore prayed that the period of 30 years was excessive, punitive and this court ought to tamper with it.
8. The learned state counsel opposed the application noting that the period given was not excessive but commensurate with the offence. He submitted that the same was an abuse of the court process and this court ought to reject it.
9. The court has considered both submissions by the parties, perused the proceedings of the trial court as well as this court. It is true that the court found for a fact that the appellant was complicit in the offence and the sentence was lawful.
10. The purpose of resentencing essentially is to allow the parties prior to the Muruatetu decision a chance to mitigate. Although the Supreme court later clarified that the Muruatetu decision did not include the offence of robbery with violence save only in murder offence, it is appreciated that that clarification came after the directives by this court referring the matter to the lower court.
11. The trend however is that the courts have now embraced the spirit in the Muruatetu authority and are considering the facts that may necessitate a party to apply for resentencing again.
12. In this case I agree with the appellant that the offence though violent did not result into a physical injury or fatal upon the complainant. The items were later recovered.
13. It is also evident that the period that the appellant has served in custody of about 10 years has helped in rehabilitating him. He has trained in various courses which shall give him a chance to integrate with the community after serving the term.
14. It is also noted that the appellant was a first offender and youthful and I find that the 30 years' sentence imposed by the lower court was excessive and not commensurate with the circumstances surrounding the incident stated above.
15. In the premises, I allow the appeal, set aside the 30 years' period imposed against the appellant and substitute it with 14 years' imprisonment from 12<sup>th</sup> August 2013.

**DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 19<sup>TH</sup> DAY OF JULY 2023.**

**H K CHEMITEI**

**JUDGE**

