



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

PETITION NO. 213 OF 2019

ABDALLAH HASSAN MWASANITE.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein **ABDALLAH HASSAN MWASANITE** was

charged with the Offence of robbery with violence contrary to 296 (2) of the Penal Code.

2. The particulars of the offence were that:

“on the 10th day of August, 2005 at Maganyukulo filing station in Kwale District within Coast Province, jointly with others not before the Court while armed with dangerous weapons namely AK 47 rifle and pistols robbed SAIDI MWATSULUKA MWAKULO Kshs. 100,000/= and one Nokia mobile phone all valued at Kshs. 117,000/= and at or immediately before or immediately after threatened to shoot the said Saidi Mwatsuluka Mwakulo.

3. The Petitioner was convicted and sentenced to suffer death.

4. His appeal to both the High Court and Court of Appeal were dismissed

and conviction and sentence upheld. The sentence to suffer death was later commuted to life imprisonment.

5. The Petitioner is now in this court pursuant to the Supreme Court

decision in **Francis Karioko Muruatetu & Another v Republic [2017] eKLR** in which the Supreme Court found the mandatory nature of death sentence to be unconstitutional.

6. When the matter came for resentencing, Ms. Moke, learned Counsel,

appeared for the State. Counsel submitted that the Petitioner was in company of 4 others and they were armed with a pistol and an AK-47 rifle which they used to threaten the victim into compliance in pursuance to the robbery. Counsel urged the court to consider the aggravating circumstances of the gang and the multiple guns. She prayed for a sentence of 20 years imprisonment including the time spent in custody prior to sentencing.

7. The Petitioner on his part submitted that he was only 20 years when

he committed the offence. That he has reformed and he is of good conduct. He submitted that nobody suffered injuries and the weapons were only used to scare the victims. He regrets the offence and strongly condemns the same. He prays this Court to consider giving him a light sentence and also consider the time he served in custody before he was sentenced. He was arrested on 7/11/2005 and sentenced on 25/7/2008.

8. I have considered the petition and the submissions. The Petitioner

committed robbery with violence. The Petitioner was in the company of four others who were armed with guns that are considered dangerous weapons. The petitioner however did not cause injury to any of the victims.

9. The aggravating factors in this case are that the Petitioner had a gun and was seemingly in a gang. He took money and phone all amounting to Kshs. 117,000/=. However, no one was injured. The guns were used to scare the victims into compliance. The Petitioner was very young when he committed the crime; he claims to have reformed and is also remorseful.

10. In Paul Ouma Otieno v Republic [2018] eKLR, the convict was armed with an AK 47 rifle and a kitchen knife and robbed the complainant of cash Kshs. 450,000/= and 3 mobile phones, **Majanja J** substituted the death sentence with 20 years' imprisonment commencing on the date of the sentence by the trial court

11. In **Benson Ochieng & France Kibe v Republic [2018] eKLR**, Joel Ngugi J. re-sentenced the Petitioners to 20 years imprisonment upon considering that the offence was aggravated by the use of multiple guns by an organized gang to commit armed robbery.

12. The Petitioner was arrested on 7/11/2005. He has now spent 15 years and 3 months in prison. I am satisfied that the Petitioner has adequately been punished for the crime that he committed, and that this Court should give the Petitioner a second chance for life in orderly society. I hereby set aside the life sentence imposed on the Petitioner and sentence him to the years which he has already spent in prison. The Petitioner is set at liberty unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 11TH DAY OF MARCH, 2021.

E. K. OGOLA

JUDGE

Judgment delivered via MS Teams in the presence of:

Petitioner in person

Mr. Fedha for DPP

Mr. Josephat Court Assistant