



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

PETITION NO. 141 OF 2018

ALI SHABAN ALI.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein ALI SHABAN ALI 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 22nd November, 2005 at about 1:00pm at Mtopanga Village, Bamburi Location in Mombasa District within Coast Province jointly with others not before the court while armed with an offensive weapon namely knife robbed George Omondi of one mobile phone make Nokia 8210 valued at Kshs. 11,000/=, a poach containing Kshs. 100 and at immediately before or immediately after the time of such robbery threatened to use actual violence to the said George Omondi Oliech.”
3. He 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 apex Court found the mandatory nature of the death sentence to be unconstitutional.
6. Mr. Fedha, learned counsel for the State submitted that the Petitioner was in company of others and they were armed with a knife that was used to cut the thumb of the victim during the robbery where he robbed the victim of a mobile phone and a porch. Counsel prayed for a definite sentence of 25 years imprisonment including years served due to circumstances surrounding his charge.
7. The Petitioner on his part submitted that he was a first offender; that he was young when he committed the offence and that he has reformed during the time he has been in prison. He stated that he has undertaken a course while in prison, and so will be gainfully employed if released.
8. I have considered the petition and the submissions. The Petitioner committed robbery with violence. The Petitioner was in the company of other people. He was armed with a knife that is considered a dangerous and offensive weapon. The Petitioner injured the victim by cutting his thumb; he robbed him off his phone and his porch.
9. I have taken into account some of the cases where convicts for robbery with violence were re-sentenced after the **Muruatetu case**. In **Benjamin Kemboi Kipkone v R [2018] eKLR** where 3 robbers armed with an AK 47 rifle robbed the complainant of Ksh. 250,000/= and a mobile phone, **Chemitei J.** substituted the death sentence with 20 years imprisonment. In **Paul Ouma Otieno v Republic [2018] eKLR** where the accused being armed with an AK 47 rifle and a kitchen knife robbed the complainant of Ksh. 450,000/= and 3 mobile phones. **Majanja J.** substituted the death sentence with 20 years imprisonment.
10. **The Petitioner in this case was in the company of others. He used a knife to injure the victim. However, his prison report indicates that he has reformed and he is disciplined; that he has also taken up a course to upgrade himself.**
11. **In the premises I am satisfied that the Petitioner who has served now 16 years in prison has atoned for his crime. Accordingly, the Petitioner is hereby set free and forthwith released from prison unless lawfully withheld.**

Dated, Signed and Delivered at Mombasa this 9th 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