



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

PETITION NO. 66 OF 2019

JUMA MOHAMED NG'AZI.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein JUMA MOHAMED NG'AZI 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 23rd day of October, 1997 at about 9:00 a.m the petitioner together with others broke into the complainant's shop and robbed Mr. Joel Kamau, Jane Wanjiru and John Ngungi. During the robbery,they injured Mr. Joel Kamau by beating him up, killed Francis Njuguna by cutting his ears and drinking his blood, stabbing him and beating him up. Mr. Muiruri escaped death by jumping into Ramisi river*” They were convicted and sentenced to death which was commuted to life sentence in 2016.
3. The petitioner's appeal to the High Court was dismissed. Another appeal to the Court of Appeal was dismissed on 21/1/2005.
4. The Petitioner is now in this court pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Another vs. Republic (2017) eKLR** in which the apex court found the mandatory nature of the death sentence to be unconstitutional.
5. When the matter came for resentencing, Ms. Balongo, learned counsel appeared for the State. Counsel submitted that the Petitioner's act of robbery with violence lead to the violent death of one of the victim and left others injured. Counsel prayed for a deterrent sentence of 40 years to life imprisonment.
6. The Petitioner on his part submitted that he has already served 22 years in prison and has lived peacefully with the inmates and that he is a first offender. He prays this court to consider giving him a light sentence.
7. I have considered the petition and the submissions. The Petitioner committed robbery with violence. The Petitioner was in the company of eight others who were armed with dangerous weapons; a gun, pangas, sledge hammers and sticks. The petitioner used actual violence on the victims who sustained injuries and caused the death of one of the victims. The only issue for determination is the length of the sentence to be imposed on the petitioner.
8. In **Nicholas Mukila Ndeti v Republic [2019] eKLR**, Learned Justice GV Odunga expressed himself thus, “ I however agree with the opinion of the learned judge in paragraph 22 (**Joseph Kaberia Kahinga & 11 Others vs. Attorney General [2016] eKLR**) that:

“Re-phrasing the Sentencing Guidelines, there are four sets of factors a Court looks at in determining the appropriate custodial sentence after determining the correct entry point (which, as stated above, I have determined to be fifteen years imprisonment). These are the following:

a. Circumstances Surrounding the Commission of the Offence: The factors here include:

i. Was the Offender armed? The more dangerous the weapon, the higher the culpability and hence the higher the sentence.

ii. Was the offender armed with a gun?

iii. Was the gun an assault weapon such as AK47?

iv. Did the offender use excessive, flagrant or gratuitous force?

v. Was the offender part of an organized gang?

vi. Were there multiple victims?

vii. Did the offender repeatedly assault or attack the same victim?

b. Circumstances Surrounding the Offender: The factors here include the following:

i. The criminal history of the offender: being a first offender is a mitigating factor;

ii. The remorse of the Applicant as expressed at the time of conviction;

iii. The remorse of the Applicant presently;

iv. Demonstrable evidence that the Applicant has reformed while in prison;

v. Demonstrable capacity for rehabilitation;

vi. Potential for re-integration with the community;

vii. The personal situation of the Offender including the Applicant's family situation; health; disability; or mental illness or impaired function of the mind.

c. Circumstances Surrounding the Victim: The factors to be considered here include:

i. The impact of the offence on the victims (if known or knowable);

ii. Whether the victim got injured, and if so the extent of the injury;

iii. Whether there were serious psychological effects on the victim;

iv. The views of the victim(s) regarding the appropriate sentence;

v. Whether the victim was a member of a vulnerable group such as children; women; Persons with disabilities; or the elderly;

vi. Whether the victim was targeted because of the special public service they offer or their position in the public service; and

vii. Whether there has been commitment on the part of the offender (Applicant) to repair the harm as evidenced through reconciliation, restitution or genuine attempts to reach out to the victims of the crime."

9. There are serious aggravating circumstances present in this case: first, the Petitioner was armed with multiple weapons during the commission of the offence. He was assisted by a group of eight other people who also had weapons. There was obvious use of excessive and flagrant force. The petitioner repeatedly assaulted one victim who died. One other victim ran away by jumping into a river. This posed a risk to his life. The Petitioner was seemingly part of an organized gang.

10. As much as the Petitioner is a first offender and claims to have lived peacefully with the inmates, he has not demonstrated reformation. He has not shown any remorse, he only seeks for a lenient punishment.

11. Taking all these factors into consideration, my view is that the aggravating factors outweigh the mitigating factors. This court must send out a clear warning to would be offenders that once found guilty they shall adequately be punished. In this matter, the manner in which the crime was conducted was so cruel, and so offensive. The petitioner even drank the blood of one of the victims.

12. **The petitioner has already served 24 years in prison. He was 25 years old at the time of commission of the crime and he is now 49 years old. I hereby set aside the life sentence imposed on the petitioner and sentence the Petitioner to forty (40) years in prison from the date of arrest.**

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 4TH DAY OF MARCH, 2021.

E.K. OGOLA

JUDGE

Judgment delivered via MS Teams in the presence of:

Petitioner in person

Ms. Balongo for the DPP

Ms. Peris Court Assistant