



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**PETITION NO. 4 OF 2020**

**(Coram: Odunga, J)**

**MARTIN MULEI MUTUA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

1. The Petitioner herein, **Martin Mulei Mutua**, together with his two co-accused were charged before the Kangundo SPM's Court in Criminal Case No. 264 of 2000 with Robbery with Violence, contrary to section 296(2) of the *Penal Code*, convicted and sentenced to death which was latter commuted to life imprisonment. The Petitioner was the 3<sup>rd</sup> accused while **Maundu Peter Alias Kiseli** and **Mutuku Musyoki** were the 1<sup>st</sup> and 2<sup>nd</sup> accused respectively. However, following the decision of the Supreme Court in Petition No. 15 of 2015 – *Muruatetu & Others vs. Republic*, the sentence against **Mutuku Musyoki** was quashed and a resentence ordered.

2. On 28<sup>th</sup> November, 2019, the trial court after conducting resentencing proceedings sentenced the said **Mutuku Musyoki** to serve 20 years but noted that since he had served 19 years in prison, he would only serve the remaining 1 year.

3. In **Marando vs. The Republic [1980] KLR 114**, Madan, Law and Potter, JJA held that:

**“The appeal against sentence causes us much concern. When two or more people are convicted of the same offence, it is wrong in principle to impose different sentences except for good reason. For instance, one may have a bad record, but that is not the case here. The appellant is a first offender. The judge gave no reason for sentencing the appellant to four years, and his co-accused to one day’s imprisonment. The only difference we can see between the two cases is that it was the appellant who raised the hue and cry against the deceased. We do not think that he did so maliciously, but rather out of misplaced and misguided zeal. It was a foolish and unnecessary act on his part, but probably well intentioned, as he freely went to report what had happened to the police. In the words of Hilbery, J in R vs. Ball (1951) 35 Cr App Rep 164, 165:**

**‘The differentiation in treatment is justified if the court, in considering the public interest, has regard to the differences in the characters and antecedents of the two convicted men and discriminates between them because of those differences.’**

**We see no justification for the disparity in the sentences in this case. If the sentence passed on the appellant is allowed to stand, he will suffer a justifiable feeling that he has been a victim of injustice.”**

4. Similarly, I find no justification in disparity in the sentences that the Petitioner herein and the said **Mutuku Musyoki** ought to serve.

5. Accordingly, I hereby quash the sentence imposed upon him and substitute therefor 20 years. Since he has already served the same, I direct that he be at liberty forthwith unless otherwise lawfully held.

6. It is so ordered.

**Judgement read, signed and delivered in open Court at Machakos this 5<sup>th</sup> day of March, 2021.**

**G V ODUNGA**

**JUDGE**

**In the presence of:**

**The Petitioner Online**

**Mr Ngetich for the Respondent**

**CA Geoffrey**