



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**PETITION NO. 91 OF 2019**

**SAFARI KATANA JEFFA.....PETITIONER**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT**

**JUDGMENT ON RESENTENCING**

1. The Petitioner herein SAFARI KATANA JEFFA 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 2<sup>nd</sup> day of June 2007, the accused jointly with others not before the court robbed Salim Makali Swalehe of Kshs. 1,500/= and Nokia Mobile valued at Kshs. 6,500.* He was convicted and sentenced to death.

3. His Appeal to the High Court and to the Court of Appeal was dismissed.

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. Wanjohi learned counsel appeared for the State. Counsel submitted that the Petitioner with three others attacked the victim with stones, pangas and knives when carrying out the robbery. They injured the upper hand and arms. Counsel prayed for a definite and deterrent sentence of 25 years imprisonment including the time already served.

6. The Petitioner on his part submitted that he was a first offender and asked for forgiveness. He promised not to indulge himself in crime in future and wishes to share his experience with the society. He has been in custody for the last 13 years through which he has undergone counseling and several rehabilitation programs. He claims to have maintained a good behavior and lived in peace with fellow inmates. He expressed that he had transformed and that he was very remorseful.

7. I have considered the Petition and rival submissions. The only issue for determination is the length of the imprisonment. The Court of Appeal in **William Okungu Kittiny –Vs- Republic (2018) eKLR** held that:-

*“...the sentence of death under Section 296 (2) and Section 297 (2) of the Penal Code is discretionary maximum punishment. To the extent that Section 296 (2) and 297 (2) of the Penal Code provides for mandatory death sentence the Sections are inconsistent with Constitution.”*

8. The Court of Appeal in **Thomas Mwambu Wenyi –Vs- Republic (2017) eKLR** cited the decision of the Supreme Court of India in **Alister Anthony Pereira –Vs- State of Maharashtra** at paragraph 70-71 where the court held the following on sentencing: -

*“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”*

9. In **Douglas Muthaura Ntoribi –Vs- Republic, Meru High Court, Misc. Criminal Appeal No. 4 of 2015** the robbers while armed with a panga stole Ksh. 500/= from the victim and occasioned him minor injuries. Chitembwe J. substituted the death sentence with a prison term of

5 years.

10. In this case the Petitioner is a first offender; he has transformed and is remorseful. The Prosecution counsel pointed out the aggravating factors to be the use of dangerous and offensive weapons in the form of pangas, kitchen knife and stones. They even injured the victim on the upper hand and arms.

11. The Petitioner has already served 13 years in prison. In my consideration of the aggravating factors and the mitigating factors, the Petitioner has spent sufficient time in prison. I therefore sentence the Petitioner to the time served. The petitioner is hereby set at liberty, and forthwith released from prison unless he is otherwise lawfully held.

**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. Wanjohi for the DPP**

**Ms. Peris Court Assistant**