



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 210 OF 2018

VURA MWACHIRUMBI.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein **VURA MWACHIRUMBI** was charged with the Offence of robbery with violence contrary to Section 295 as read together with section 296 (2) of the Penal Code.
2. The particulars of the offence were that on the 15th day of May, 2010 at Kanana Corner, Shimoni Shopping centre in Msambweni Sub County of Kwale County, jointly with others not before the court whilst armed with dangerous weapons namely metal bars, robbed Masudi Swalehe Kiryauta cash of Kshs. 190,000/- four mobiles phones, three packet simcards and cigarettes all valued at Kshs. 221,850 and at or immediately before or after the time of such robbery used actual violence on the Masoud Swalehe Kiryauta. He was convicted and sentenced to suffer death which was later reduced to life imprisonment.
3. His Appeal to the High Court and Court of Appeal was dismissed and sentence upheld.
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 unconstitutional.
5. When the matter came for resentencing, Ms. Balongo, learned counsel for the Prosecution submitted that the Petitioner committed a heinous offence and should be sentenced to 35 years.
6. The Petitioner on his part submitted that he has reformed, and that he regretted the offence and has learnt a lot in jail. He prayed to be jailed for 10 years.
7. When considering resentencing, the following considerations are relevant, that is, whether the offender used any dangerous and offensive weapons, whether the offender injured the victim and to what degree, whether the offender is remorseful, whether the offender is a first time offender, whether the period the offender has been in prison is in the court's considered opinion enough punishment, and whether the offender has reformed
8. In **Paul Ouma Otieno –Vs- Republic (2018) eKLR** 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
9. The Petitioner in this case used dangerous weapons; he attacked the complainant with a panga and an iron bar and stole money and other items worth a huge amount of money. The victim sustained injuries on the head and on other parts of the body. This was indeed a dreadful act. In my view the offender has not served sufficient time in prison. I am satisfied that a sentence of 20 years in prison is adequate punishment for the crime.
10. In the upshot I hereby set aside the death sentence and instead thereof I jail the petitioner to serve a prison term of 20 years 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