



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL PETITION NO. 2 OF 2018

MURIITHI MWAI MUGO.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL PETITION NO. 5 OF 2019

DANIEL WACHIRA KINYUA.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

AND

CRIMINAL PETITION NO. 25 OF 2019

SAMUEL MUGO MUCHOGIA.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. **MURIITHI MWAI MUGO, DANIEL WACHIRA KINYUA** and **SAMUEL MUGO MUCHOGIA** were charged and convicted for the offence of Robbery with Violence Contrary to Section 296 (2) of the Penal Code in Kerugoya Resident Magistrates Court Criminal Case No. 698 of 1999. They were sentenced to suffer death as the mandatory sentence on the 20.1.2000.

2. Their appeal against both conviction and sentence in **HCCRA No. 7, 18 and 19 of 2000**, was dismissed. They moved to the Court of Appeal, in **Nyeri Criminal Appeal No. 286 of 2006**. The learned Judges found no merit in the appeal. They have therefore exhausted all appeal options.

3. Pursuant to the **Supreme Court of Kenya decision in Francis Karioko Muruatetu and Another -vs – Republic (2017) eKLR**, the petitioners seek for re-hearing on sentence by their separate petitions which arose from the trial court's sentence, and which are hereby consolidated, having arisen from the joint commission of the offence on the 26.1.1999 at Kiamaina Trading Centre within Kirinyaga County.

4. The particulars of the offence were that while armed with pangas, and iron bars, they robbed one Mwangi Gathundu of numerous items and cash, and at or immediately before or after the time of such robbery wounded the said Mwangi Gathundu.

The three petitioners filed their submissions, being their mitigating factors. I shall hereafter highlight each petitioner's mitigating factors.

5. The Supreme Court in the "**Muruatetu decision**" set out guidelines with regard to mitigating factors in a sentence re-hearing, thus

- **Age of the offenders.**

- **Being a first offender.**
- **Whether the offender pleaded guilty**
- **Character and record of the offender.**
- **Commission of the offence in responsive to gender – based violence**
- **Remorsefulness of the offender.**
- **Possibility of reform and social re-adaptation of the offender.**
- **Any other factor that the court considers relevant.**

6. The above are advisory. The court is obligated to exercise its discretion in the re-sentencing hearing.

The prosecution in its submissions urged the court to exercise its discretion, submitting that the petitioners have paid for their crimes during the period they have served in both custody and prison of 22 years.

7. I have considered each of the petitioners mitigating factors. They are remorseful for the commission of the offence. They pray for forgiveness from the victim and the state, and undertake never to commit such crimes ever again.

8. For **MURIITHI MWAI MUGO**, he submits that he has seen God's light and is reformed and rehabilitated, that he is a first offender and would wish to be reunited with his family.

9. For **DANIEL WACHIRA KINYUA**, a report from the Nyeri Maximum Prison speaks of a reformed and rehabilitated prisoner and has trained in skills that would assist him to earn a living being polishing grade 2 and 3, and basics in modern farming.

10. **SAMUEL MUGO MUCHOGIA**, urges for reduction of the sentence upon consideration of the long period he has been incarcerated.

11. In very similar circumstances, courts have reduced sentence on capital offences, and specifically Robbery with Violence.

Among them are:-

Benjamin Kemboi Kipkone -vs- Republic (2018) eKLR where the robbers armed with 47 rifles robbed the complainant of Kshs.250,000/=. The death sentence was substituted with 20 years imprisonment.

In Benson Ochieng & Another -vs- Republic (2018) eKLR, multiple guns were used during the robbery. The sentence was reduced to 20 years imprisonment.

In **Paul Ouma Otiento -vs- Republic (2018) eKLR** the death sentence was reduced to 20 years imprisonment.

In **Mwendwa Musili -vs- Republic eKLR**, the death sentence of the first offender, who committed the offence at 42 years old, was reduced to 20 years imprisonment.

12. Sentencing is at the discretion of the court as observed in **Fatuma Hassan Sato -vs- Republic (2006) eKLR**. It however has to be exercised judiciously with reason. The court must take into account all the relevant factors, and guidelines stated in the ***Muruatetu decision***. It must be in accord with sound legal principles of fairness, certainty and clarity.

13. Further, **the Judiciary's Sentencing Policy sets out guidelines to guide the courts in sentencing**, thus;

- **Retribution** – To enable the offender reform from his criminal conduct in a just manner.
- **Deterrence** – To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
- **Rehabilitation** – To enable the offender reform from his criminal disposition and become a law-abiding person.
- **Restorative justice** – To address the needs arising from criminal conduct such as loss and damages.
- **Community protection** – To protect the community by incapacitating the offender.
- **Denunciation** – To communicate the community's condemnation of the criminal conduct.

14. I have considered relevant circumstances under which the offence was committed, the mitigating factors and the judicial guidelines.

The petitioners have been behind bars for 22 years since January 1999. By their mitigating factors, they have realized the folly of their actions and are remorseful.

They have acquired necessary technical skills that may be useful to enable them earn an honest living for themselves and their families.

15. I agree with the prosecution that the petitioners have paid for the crime they committed 22 years ago.

Accordingly, I set aside the trial court's judgment and substitute it with an order of immediate release from prison for each of the named petitioners, unless otherwise lawfully held.

Orders accordingly.

Signed electronically.

J. N. MULWA

JUDGE

DELIVERED AT CHUKA THIS 9TH DAY OF APRIL, 2021.

L. W. GITARI

JUDGE