



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

PETITION NO. 212 OF 2018

SILUS MURIUKI.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein **SILUS MURIUKI** 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 25th day of January 2007, at 8:00pm, at Kisimani location in Mombasa District within Coast Province, jointly with another not before the court, while armed with a dangerous weapon namely a knife, robbed Jacob Mugambi of cash Kshs.6,000/-, a pair of shoes, one wrist watch and a wallet containing an identity card all valued at Kshs.7,500/=, and at or immediately before or immediately after the time of such robbery used actual violence on the said Jacob Mugambi.”**
3. He was convicted and sentenced to death. His Appeal to the High Court was dismissed and sentence upheld.
4. The Petitioner is now in this court pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Another v 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 was in company of another person, he was armed with a dangerous weapon in the form of a knife. He severely injured the victim on the left niche of his eye, on the chest and on the right elbow. Counsel submitted that despite the petitioner having a favorable report from the prison authorities, the aggravating circumstances by far outweigh the mitigating circumstances in this case. That the offence was heinous and its physical and psychological effect on the victim cannot be underestimated. Counsel prayed for a deterrent sentence of 30 years imprisonment.
6. The Petitioner on his part submitted that he has been in custody for the last 12 years through which he has reformed. He claims to have maintained a good behavior and lived in peace with fellow inmates. He stated that he has been undergoing health difficulties. He prayed this court to consider him for re-integration back to the society.
7. I have considered the Petition and rival submissions. The only issue for determination is the length of sentence to be imposed. The Court of Appeal in **William Okungu Kittingy v 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 v Republic [2017] eKLR** cited the decision of the Supreme Court of India in **Alister Anthony Pereira v 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. The Judiciary Sentencing Policy Guidelines lists the objectives of sentencing at page 15 paragraph 4.1 as follows:

Retribution: To punish the offender for his/her 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 the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims, communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.

Community protection: To protect the community by incapacitating the offender.

Denunciation: To communicate the community's condemnation of the criminal conduct

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 a knife. He even injured the victim on left niche of his eye, on the chest and on the right elbow.

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 13TH DAY OF APRIL, 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