



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 137 OF 2019 CONSOLIDATED WITH 69 OF 2020

1. SAID RAMA TENGA

2. HAMADI ALI MWAMREZI.....PETITIONERS

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioners herein **SAID RAMA TENGA**, and **HAMADI ALI MWAMREZI** were 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 31<sup>st</sup> of December, 2004, at about 12 noon at Tiwi Location Kwale, the Petitioners together with another being armed with a dangerous weapon namely a knife, jointly robbed the complainant of her handbag, Kshs. 3,000, an identity card, a post bank book and a mobile phone make Motorola all valued at kshs. 8,920/-**

3. They were sentenced to death. Their appeals to the High Court and to the Court of Appeal were dismissed. Their sentence was later commuted to life imprisonment.

4. The Petitioners are 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 Petitioners were armed with a dangerous weapon, and they used actual violence on the victim who sustained injuries on her finger. Counsel prayed for a sentence of 20 years imprisonment.

6. The Petitioner (SAID RAMA TENGA) on his part submitted that he is a first offender, remorseful and reformed. He has been in custody for 16 years and has learnt his lesson. He submitted that he has lived peacefully with fellow inmates and the prison authorities. He prayed to be sentenced to the term that he has already served.

7. The Petitioner (MWANIKI NYAGA) on his part stated that he is a first offender; he has been in custody for 10 years; and prayed for the court to consider time spent in remand. He promised to live well with the society if given an opportunity to rejoin it.

8. The Petitioner (HAMAD ALI MWAMREZI) on his part stated that he is a first offender; he is remorseful, has been living peacefully with fellow inmates and prison authorities and has fully reformed. He is now 45 years old and regrets his actions.

9. I have considered the Petition and the submissions. The only issue for determination is the length of the sentence to be imposed. The Court of Appeal in **William Okungu Kittiny 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.**”

10. 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 Mahareshttra 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.”**

11. In **Douglas Muthaura Ntoribi v 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.

12. In this case the Petitioners have transformed and are remorseful. The Prosecution counsel pointed out the aggravating factors to be the use of a dangerous and offensive weapon in the form of a knife. They occasioned a minor injury on the victim

13. The Petitioners have already served 16 years in prison. In my consideration of the aggravating factors and the mitigating factors, the Petitioners have spent sufficient time in prison. I therefore sentence the Petitioners to the time served. The petitioners are hereby set at liberty, and forthwith released from prison unless they are otherwise lawfully held.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 12<sup>TH</sup> DAY OF APRIL, 2021.**

**E. K. OGOLA**

**JUDGE**

Judgment delivered via MS Teams in the presence of:

Petitioners in person

Ms. Wanjohi for the DPP

Ms. Peris Court Assistant