



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 133 OF 2019**

**ALEX OCHIENG.....APPELLANT**

**VERSUS**

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

**RULING**

1. The Appellant herein ALEX OCHIENG was charged with three counts of the Offence of Robbery with Violence contrary to 296 (2) of the Penal Code.

2. The Appellant had filed an appeal in 2008 in a Criminal Appeal High Court No. 227 of 2008. The Appeal was dismissed. The Appellant is now seeking resentence in this court. However this is a court of equal jurisdiction and cannot sit on appeal on decision of a court with concurrent jurisdiction. Petition of Appeal dated 23.12.2019; No. 133 of 2019 is dismissed.

3. The appellant has also approached this court through a Criminal Application filed on 26.1.2021 seeking for a resentence. He is 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.

**1. The learned counsel appearing for the State has no objection to the resentence application.**

**2. The applicant submitted that he was a first offender and is now fully reformed due to the rehabilitative programs in the prison. He prayed for a definite sentence and if possible be sentenced to time already served.**

**3. I have considered the submissions. The petitioner was involved in a heinous offence in which he used actual violence and in the process injured someone. He robbed off money and goods all valued at Kshs. 109,800/=.**

**4. 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**

8. The petitioner has been in prison for 13 years. In my view a definite period of 20 years will be sufficient and commensurate with offence committed. Same to run from the date of his arrest 9/6/2007.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 17TH DAY OF JUNE, 2021**

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**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**