



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

CRIMINAL APPEAL NO. 147 OF 2019

EDWIN MATAYI MASUNGO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[An appeal arising from the sentence by Hon G. Adhiambo (P.M) in original Kimilili S.P.M

Criminal Case No. 389/2019 delivered on 6th September, 2019]

JUDGMENT

The appellant was arraigned in the subordinate court charged with the offence of robbery with violence contrary to Section 295 as read together with Section 296(2) of the Penal Code. The particulars were that on the 21st day of May, 2019 at Londo Village in Bungoma North Sub County within Bungoma County robbed Getrude Nasambu cash of Kshs 1,800/= and immediately before the time of such robbery wounded the said Getrude Nasambu.

The appellant was tried and convicted of the offence. He was subsequently sentenced to serve 7 years in prison.

Dissatisfied with the sentence, the appellant moved this court for re-sentencing. He raised the following grounds;

- 1. That he is a first offender.**
- 2. That he pleaded not guilty to the charges.**
- 3. That 7 years imprisonment is excess in the circumstances.**
- 4. That the trial magistrate erroneously outweighed the appellant's defence and mitigation.**
- 5. That the trial court failed on its duty to inform the appellant his constitutional right despite the knowledge that the appellant was a layman.**

He also filed his mitigation which have been duly considered. The respondent filed its written submissions. The same have been given due consideration.

Analysis and determination

This appeal raises the sole issue of sentencing. The appellant's plea before this court is that the sentence of 7 years imprisonment meted out on him is excessive in the circumstances. The court is therefore called upon to inquire into the suitability of the sentence.

The High Court, in *Stephene Kimathi Mutunga -v- Republic (2019) eKLR* while holding that the High Court has unlimited jurisdiction in both Civil and Criminal matters and the mandate of enforcing fundamental rights and freedoms as enshrined in the Constitution, stated that the High Court has jurisdiction to deal with the petition for sentencing rehearing.

In *Michael Kathewa Laichena & Another -v- Republic (2018) eKLR* Justice Majanja stated:

“by re-sentencing the petitioner, the High Court is merely enforcing and granting relief for what is in effect a violation caused by the imposition of the mandatory death sentence”.

The High Court has the mandate under **Article 165 (3) of the Constitution** to hear and determine as well as to enforce matters of rights and fundamental freedoms enshrined in the constitution.

The Judiciary Sentencing Policy Guidelines lists the objectives of sentencing at page 15 paragraph 4.1 among others; deterrence and rehabilitation or reformation of the offender.

The record shows that the appellant in his defence said that the money was given to him by the complainant and raised alarm when he refused to return the money. This account cannot be true given the injuries he inflicted on the complainant. He asked for forgiveness and promised to reform. He never offered any mitigation.

It is noteworthy that the penalty prescribed for robbery with violence under section 296(2) of the penal code is death.

Having considered the record and the material on record, I am satisfied that the sentence of 7 years meted out on the appellant is reasonable. There is no reason to disturb that finding. The appeal is accordingly dismissed.

DATED at BUNGOMA this 17th day of September 2021.

L. A. ACHODE

JUDGE