

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL PETITION NO. 25 OF 2019

GEOFFREY MAKOKHA.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The petitioner herein was convicted in Kakamega CMCCRC No. of 1663 of 2003, of robbery with violence, contrary to section 296(2) of the Penal Code, Cap 63, Laws of Kenya, and sentenced to death. The petitioner filed an appeal at the High Court, Kakamega HCCRA No. 65 of 2008, where the conviction was affirmed and the sentence upheld. An appeal to the Court of Appeal, Kisumu 573 of 2010, was equally dismissed.
2. There are recent developments in the Kenyan jurisprudence with respect to mandatory sentences. The Court of Appeal and the Supreme Court have led the way. It is from that background that the petitioner moved this court in the instant cause, through an undated petition, filed herein on 17th April 2018. The same principally seeks re-sentencing in view of the developments that I have referred to here above.
3. I note that upon conviction, the petitioner did not plead for leniency. However, I do not think the same should be taken against him, given that the penalty for the offence he was convicted of was mandatory, and the hands of the court were tied. Mitigation would have been nothing more than an academic exercise.
4. The petitioner had been tried and convicted jointly with Philip Andati Nangambo and Daniel Sifuna Juma. Daniel Sifuna Juma filed Kakamega HC Constitutional Petition No. 22 of 2018, which was determined by Njagi J on 31st July 2019. Njagi J found that the prison punishment was enough for the petitioner, he set aside the death sentence, ordered his release from prison custody and placed him on two years' probation.
5. For the purpose of achieving uniformity, parity, consistency and proportionality in sentencing, by ensuring that persons found guilty of committing the same offence are treated equally, I hereby direct that the petitioner herein be treated equally with the petitioner in Kakamega HC Constitutional Petition No. 22 of 2018.
6. I, therefore, hereby set aside the death penalty imposed on the petitioner herein, I order that the petitioner be released from prison custody and I hereby place him under probation for fourteen (14) months, under the supervision of the Probation Officer, Kakamega Central. It is so ordered.

DATED, SIGNED and DELIVERED in open court at KAKAMEGA this 17th DAY OF January, 2020

W MUSYOKA

JUDGE