



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO. 129 OF 2015

JAMES KAGOTHO MWANGI.....APPELLANT

VERSUS

REPUBLICRESPONDENT

SENTENCE RULING

1. The Appellant was charged with the offence of robbery with violence contrary to Section 296(2) of the Penal Code at the Molo Law Courts. The substance of the charge was that on the 14th day of January 2014 at Salгаа area in Rongai District Nakuru County within Rift Valley province robbed Yusuf Kibet Sunburi of a Motor bicycle valued at 93,000/= Registration No. KMDA 379R make Bajaj Boxer red in colour and at or immediately after the time of such robbery wounded the said Yusuf Kibet Sunburi.
2. The Appellant faced an alternative charge of handling stolen Property contrary to Section 322(2) of the Penal Code. It was alleged that on the 14th January, 2014 at Salгаа in Rongai District Nakuru County within Rift Valley Province otherwise then in the course of stealing dishonestly received or retained Motor Cycle Registration Number KMDA 379R Male Bajaj Boxer red in colour knowing or having reason to believe it to be stolen.
3. The Appellant denied the charges and a fully-fledged trial followed. At the conclusion of the trial, the Learned Trial Magistrate convicted the Appellant and sentences him to death.
4. Dissatisfied with both the conviction and sentence, the Appellant appealed to this Court. His appeal was heard by the Learned Mativo J. In a judgment dated 11/06/2019, the Learned Judge affirmed the Lower Court decision on conviction. The Learned Judge, however, in keeping with the emerging jurisprudence on mandatory death penalty, set aside the death sentence and ordered that the Appellant be afforded an opportunity to mitigate before sentence is pronounced on him.
5. I therefore conducted a sentence re-hearing as per the Judge's orders since Judge Mativo had heard the matter as a Visiting Judge during service week.
6. During the sentence hearing, the Prosecution pointed out that the Appellant inflicted serious injuries on the victim and requested that the Court considers a minimum sentence of thirty (30) imprisonment. It conceded that the Appellant is a first offender.
7. On his part, the Appellant pleaded for leniency and forgiveness. He said that he was young and impressionable when he committed the offence in 2014 but that he has had plenty of time to reflect on his actions since he has been in custody since then. He told the Court that he was only twenty years old at the time he committed the offence. He pleaded for an opportunity to come out of Prison and serve the nation.
8. I have considered all the mitigating and aggravating circumstances in the case. It is true that the Appellant hit the victim on the head with a club and the victim got injured. However, the nature of the injury was not too serious. There is no evidence that the Appellant used unnecessarily depraved force or acted in an excessively inhumane way towards his victim. He hit him once to gain access to the motor cycle and then fled in it.
9. The Appellant was alone in committing the crime – and he did not use a firearm or a dangerous weapon. During the hearing, the Appellant expressed remorse and I concluded that it was genuinely felt.
10. Taking all these factors into consideration and considering the relative youthfulness of the Appellant at the time he committed the offence, it is my view that a prison sentence of fifteen (15) years is proportionate to the crime he committed.
11. The orders of the Court, therefore, are that:

a. The death sentence imposed on the Appellant is hereby set aside;

b. In its place, the Appellant shall be sentenced to a period of fifteen (15) years which shall be computed from the date the Appellant was sentenced i.e. 15/05/2015. I have expressly taken into consideration the period the Appellant was in custody in coming up with the sentence term.

12. Orders accordingly.

Dated and Delivered at Nakuru this 16th day of January, 2020

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JOEL NGUGI

JUDGE