



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MISC. CR. PET. NO. 42 OF 2019

HEZBON OKOTH AGAI.....PETITIONER

-VERSUS-

REPUBLIC.....RESPONDENT

NOTES ON RE-SENTENCING

The Petitioner, **HEZRON OKOTH AGAI**, was convicted for the offence of **Robbery with Violence** Contrary to **Section 296 (2)** of the **Penal Code**. He was then sentenced to suffer death as by law prescribed.

1. His appeal to the High Court was dismissed.
2. According to the Petitioner, he lodged an appeal at the Court of Appeal, but the said appeal has never been determined.
3. Although the Petitioner told this court that he lodged his appeal at the Court of Appeal in the year 2006, I find that that cannot have been possible, considering that the judgment by the High Court was delivered on 7th October 2008.
4. In the court file, I traced a Notice of Appeal dated 29th October 2008.
5. The reason I have set out these particulars is to make the point that there was still an appeal which was not yet determined.
6. In the circumstances, it is possible that the pending appeal could be determined at a future date.
7. This court is unable to foretell whether or not the Petitioner's pending appeal would be successful.
8. If the said appeal were to succeed on the issue of conviction, the whole process currently being urged before this court would have been an exercise in futility.
9. Secondly, even if the appeal against conviction were to be upheld, there is a possibility that the Court of Appeal, (deriving guidance from the Supreme Court's Judgment in "*the Muruatetu Case*"), could vary the sentence.
10. Accordingly, I hold the considered view that, because the Petitioner still has a pending appeal at the Court of Appeal, the currently Petition for re-sentencing was premature.
11. In the circumstances, I reject the Petition: It is struck out.
12. For the avoidance of any doubt, the Petition has not yet been determined on merit. Therefore, should the appeal at the Court of Appeal be determined in whichever manner that was not favourable to the Petitioner, it may still be open to the Petitioner to bring a fresh petition.

DATED, SIGNED and DELIVERED at KISUMU This 18th day of February 2020

FRED A. OCHIENG

JUDGE