

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

CRIMINAL MISC. APPLICATION NO. 1 OF 2020

ABDI SHUKURI GURE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant was charged with robbery with violence under section 296(2) of the Penal Code Cap 63 Laws of Kenya in Count 1 and in Count 2 attempted robbery contrary to section 297(2) of the Penal Code whereof he was found guilty in both counts and was sentenced to suffer death in CRC No. 718 of 2001 at Garissa on 18/11/2002.
2. He lodged HCCRA No. 5 of 2003 in which after it was heard the death sentence in Count 1 was upheld and Count 2 was substituted with life sentence on 23/11/2006. Subsequently he lodged CR Appeal in Court of Appeal No. 326 of 2006 which was dismissed on 15/5/2009.
3. He has now moved this court for resentencing relying on Supreme Court Case of Muruatetu 2017 eKLR.
4. The prosecution has no objection and said court can exercise its discretion.
5. He says that he has been in custody for over 19 years. He has reformed according to what he has told court. He has undergone training.
6. The items stolen were worth Kshs.245/= and the injuries noted were actual bodily harm.
7. In sentence the court said it was bound by mandatory sentence prescribed thus the mitigations were not considered.
8. The circumstances of the case thus dictate the court in all circumstances to set aside the sentence imposed and award the appropriate sentence.
9. Thus, the court considered the injuries, value of items stolen and 19 years plus of custody.
10. I order: -

(1) The sentence in Garissa SRM's Court Case No. 718 of 2001 is set aside.

(2) The applicant is sentenced to period already served thus to be released forthwith.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 2ND DAY OF APRIL, 2020.

C. KARIUKI

JUDGE