



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 68 OF 2018

BEUMAZI NDORO CHAKA.....PETITIONER

VERSUS

THE DIRECTOR OF PUBLIC

PROSECUTIONS.....RESPONDENT

JUDGMENT

1. The Petitioner herein Beumazi Ngoro Chaka was charged and convicted for the offence of robbery with violence in Kwale Criminal Case No. 1353 of 2009. He was sentenced to death. His appeal to High Court in Mombasa vide HCCRA No. 43 of 2011 was dismissed. He further appealed to the Court of Appeal vide Criminal Appeal No. 94 of 2014 Mombasa. His appeal was dismissed.

2. The Petitioner is now in this court for resentencing purposes pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Another vs. Republic [2017] eKLR** in which the apex court found that the mandatory nature of the death sentence is unconstitutional.

3. The background to the petition is as follows:

Bakari Mwareje Juma “*the complainant*” was a livestock trader who plied his trade at Mwangulu and Kinango Trading Centres in Kwale County. In the early hours of 7th September, 2009 at 5.20 a.m. to be precise, he was on his way to Mwangulu Trading Centre riding his bicycle, make Phoenix. His mission was to buy livestock. On the way, he was waylaid by three men who were armed with pangas. They immediately set upon him and cut him on the head, shoulders and the back, all in a bid to wrestle the bicycle from him. Eventually, they overpowered him and he was forced to run into the nearby bush screaming as they pursued him. The complainant managed to evade his assailants and ran into the home of Chimboza Hassan, having left behind the bicycle. He sought refuge in the home and whilst there he contacted his brother, Stondo Juma Mwareje (PW2) who went and assisted him to Mwangulu Police Post. On the way, they went past the scene of crime and noted that the attackers had, in fact, made away with the bicycle. At Mwangulu Police Post, the complainant was received by P.C. Joseph Mutiso (PW8). After noting down the complaint, he issued the complainant with the P3 Form and escorted him to Mwangulu Dispensary for treatment. The P3 Form was subsequently filled by Tilus Kyalo, (PW9), a Clinical Officer then based at Kinango District Hospital. He assessed the injuries inflicted on the complainant as harm.

4. The Petitioner submitted that he regretted the crime. He submitted that the 10 years he has spent in prison has taught him a lesson that crime does not pay. He has also learnt to mend shoes, an occupation which he submitted would help him to stay out of mischief if he is set free. The Petitioner submitted that he is a father of two young children aged 10 and 12 and who need him. He prayed that he be jailed for 15 years including the time already spent in prison.

5. On her part, Ms. Ogega, learned Counsel for the State submitted that the Petitioner should be jailed for 27 years because he used crude weapons during the robbery.

6. I have carefully considered the submissions. Pursuant to the aforesaid case of Muruatetu, this court has the jurisdiction to revise the sentence herein.

7. On sentencing however, the Petitioner committed robbery during which a person was injured and his bicycle taken away. The Petitioner has submitted that he regretted the offence, and that he has already reformed. Nonetheless, this court in sentencing must sent out a clear warning that crime does not pay and will be adequately punished once proved.

8. In the upshot I render Judgement as under:

(i) I hereby set aside the death sentence imposed upon the Petitioner by the trial court.

(ii) instead thereof I hereby jail the Petitioner to serve a term of Seventeen (17) years in jail from the date of arrest.

9. Right of appeal in 14 days.

Dated, Signed and Delivered at Mombasa this 9th day of April, 2020.

E. K. O. OGOLA

JUDGE

In the presence of:

Ms. Mwangeka for DPP

Petitioner in person via video link

Mr. Kaunda Court Assistant