



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCRA NO. 66 OF 2019

MUTINDA MUVEVI KAVENGO.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Being an appeal from the judgment of the Senior Resident Magistrate Hon. R. Koech dated 30/03/2016 in Makueni SRMCR No. 436 of 2014.)

JUDGMENT

- 1. Mutinda Muvevi Kavengo** the Appellant herein was charged and convicted of the offence of robbery with violence contrary to section 296(2) Penal Code on 30th March 2016. He was on the same date sentenced to suffer death.
- Not being satisfied with the outcome, he filed Machakos High Court Criminal Appeal No. 17 of 2016. The same was heard by Justice D. Kemei and a judgment dismissing the entire appeal delivered on 3rd November, 2017.
- He moved a step further vide Machakos High Court Criminal Miscellaneous Petition No. 157 of 2018 where the death sentence was quashed and order for resentencing made by Justice G. Odunga on 27th November, 2018.
- The SPM Makueni Criminal Case No. 436/2014 file was remitted back to the SPM Makueni for compliance. The same was heard on 11th December, 2018 by Mr. J. Mwaniki Senior Principal Magistrate, as a result of which the Appellant was sentenced to twenty (20) years imprisonment.
- On 8th May 2019 he filed Makueni High Court Miscellaneous Criminal Application No. 01 of 2019 seeking leave to file an appeal out of time. The same was filed and heard on 14th February 2020. The appeal is against the twenty (20) year sentence.
- When the appeal came for hearing he made it clear that his appeal was ONLY against sentence. He submits that he is sixty (60) years and has transformed through his stay in prison. Filed in court by the Machakos prison in charge are two certificates namely:
 - i. Completion of discipleship training on growing and maturing in Christ.**
 - ii. Completion of the prisoner's journey.**
- He has asked this court to reduce his sentence of twenty (20) years to allow him go home. He has not pointed out any error made by the trial court in sentencing him to twenty (20) years imprisonment. The sentence allowed under section 296(2) Penal Code is death.
- The sentence was reduced to twenty (20) years on 11th December, 2018 after the trial court took into account the mitigation by the Appellant. The learned trial Magistrate even made an order for the sentence to run from the Appellant's date of arrest i.e. 3/6/2014.
- If dissatisfied with the judgment in Machakos HCCRA No. 17 of 2016 the Appellant ought to have challenged it before the Court of Appeal. He instead chose to go round and round the issue of resentencing which I find to be an abuse of the court process.
- I have not found on record anything to make me interfere with the sentence imposed, by way of resentencing on 11th December 2018.

11. I therefore dismiss the appeal and uphold the sentence.

Orders accordingly.

Delivered, signed & dated this 8th day of May 2020, in open court at Makueni.

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H. I. Ong'udi

Judge