



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISCELLANEOUS CRIMINAL APPEAL NO. 155 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

LUCY WAIRIMU.....APPLICANT

This Ruling is being delivered via Zoom Video conferencing/Email pursuant to several directives by the Honourable Chief Justice, the Chief Registrar of the High Court, and Administrative Directions of the Presiding Judge, Nakuru High Court issued on the first day of April of 2020 all relating to operations of courts during this Covid-19 pandemic.

RULING ON RE-SENTENCING HEARING.

1. The applicant Lucy Wairimu and two others were charged, and **convicted for the offence of robbery with violence contrary to Section 296 (2) of the Penal Code**, and sentenced to death on the 28/1/2018.

The particulars of the offence were that on the 19/11/2016 at Mwisho Wa Lami in Njoro Sub-County within Nakuru County, jointly with others not before court they robbed John Kimani Kingori of Shs.14,000/= and at the time of such robbery wounded him.

2. The applicant did not appeal against the trial courts judgment. The Supreme Court in the Francis Karioko Muruatetu & another Vs. Republic (2017) e KLR gave death convicts a new lease of life by granting courts discretion to re-examine death sentences meted in capital offences, and if satisfied that a lesser sentence is appropriate in the peculiar circumstances of the offence and the manner of its commission, and upon taking mitigating factors by the convict, may review the said sentence and substitute it with an appropriate sentence taking into account the objectives of sentencing.

3. The Supreme Court did not however outlaw the mandatory death sentence. It remains lawful, a position stated in the 2010 Constitution in Article 165 (3) (a). The above clause gives the High Court unlimited original jurisdiction in Criminal and Civil matters – **Miscellaneous Criminal Appeal No. 72/2018 Lawrence Nkonge Mwiandi – Vs- Republic**.

4. Pursuant to the Muruatetu decision, the applicant approached this court by her application dated 2016/2018, filed on same date for sentence re-hearing.

5. In mitigation, the applicant in her written and oral submissions told the court that she is remorseful, that she was lured to the commission of the offence by bad company, that she was young, and while serving prison sentence, she realized the folly of her actions which she regrets. She sought forgiveness from the victim and the state.

6. While in custody and prison for the last three years, the applicant utilized the time to learn several trades; Trade Test Grade II in dress making, cooker, Bible Study, Guidance and Counselling and other Industrial skills like making soap, bakery, embroidery among others. She produced to the court certificates for the said trades from the prison authorities.

At the time of commission of the offence, the applicant was 26 years old. She is now 29 years old. I have observed the applicant. She is healthy and given a chance, she may be a useful person in the community where she could make use of her trainings while in prison.

7. The prosecution/respondent agreed with the applicant that the sentence meted upon the applicant was excessive, and in particular stating that the applicant did not actively participate in the commission of the offence, and urged for a reduction of the sentence.

8. I have considered the sentence meted by the trial court, and particularly the role played by the applicant thereto, that she only led the attackers to the complainant, and the reason that the prosecution submitted that she played no active role.

The victim was robbed of Shs.14,000/=. He was injured at his leg. The robbers were not armed with dangerous weapons. There were no aggravating circumstances during the commission of the offence.

9. I have considered the objectives of sentencing as stated in the 2016 Judiciary Sentencing Policy as well as parameters stated in the Muruatetu case, being the age of the offender, being a first offender, character and record of the offender, remorsefulness of the offender, and the possibility of reform and social re-adaptation of the offender.

I have also considered decisions by other courts for guidance, and uniformity.

10. In **Ibrahim Ali Halake Vs. Republic (2019) e KLR**, life imprisonment sentence was substituted with five years.

Eldoret Court of Appeal No. 22 of 2016 (2018) e KLR, Wycliffe Wangusi Majura Vs. Republic, the death sentence was reduced to 20 years imprisonment.

In Paul Ouma Otieno Vs. Republic the Court of Appeal at Kisumu reduced the death sentence to twenty years even where the robbery was aggravated by use of a firearm.

In Issac Kimanzi Musee & 2 others Vs. Republic (2019), the court set aside the life imprisonment commuted from a death sentence and substituted it with 20 years imprisonment.

11. The circumstances in this application are peculiar, in that the state (prosecution) conceded that the sentence was harsh, and urged for a lenient substitute.

12. To that end, and upon consideration of the peculiar circumstances, and the period the applicant served both in custody and in prison of four years, and upon my discretion, I set aside the death sentence imposed upon the Applicant, Lucy Wairimu and substitute it with time served in prison. The applicant is therefore set free forthwith, unless otherwise lawfully held.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 7TH DAY OF MAY 2020.

J.N MULWA

JUDGE.