



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO. 24 OF 2020

BEN SANINGO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against sentence in Criminal Case No. 129 of 2020 at Kilgoris Law Courts before Hon. R.M. Oanda (P.M) delivered on the 18th February 2020)

JUDGMENT

1. **BEN SANINGO** the appellant was charged with Robbery with Violence contrary to section 296 (2) of the Penal Code. He pleaded guilty to the offence and was sentenced to 20 years imprisonment.

2. On the 3rd March 2020 he filed a petition of appeal. He states that he is aggrieved and dissatisfied with the conviction and sentence of 20 years imprisonment. His grounds of appeal as follows;

i. That the learned trial magistrate erred both in law and fact when put it on record that the prosecution had proved their case beyond reasonable doubt when there was some conflict discrepancies showing cheating and art of framing up a case

ii. That he pleaded guilty during the charge because he was beaten during arrest and he became confused and he was lied to by the arresting officer to plead guilty without knowing the offence he was accused.

iii. That the learned magistrate erred both in law and fact when he failed to give him a chance to give his side of the account that the complainant was his employer for 4 months and had not paid him for the period and turned and said he was a robber.

iv. That the evidence provided in court was flawed and the trial court erred in basing the conviction on such evidence which did not meet the standards of law.

v. That the sentence of 20 years was manifestly oppressive and inhuman.

3. The appellant filed written submission. He submits as follows; that he is a first offender and the offence was due to peer pressure from his friends. That he pleaded guilty at the trial and also maintained the same at his cross examination by the court and the prosecution. That he is remorseful. That he pleading to the court to consider that he is a young man with a family and a sole bread winner. He seeks a reduction of his sentence.

4. Mr. Otieno opposed the appeal on sentence and submitted as follows; that the appellant pleaded guilty to the charge of robbery with violence. The plea was properly taken. The charge was read to him in language he understands and the facts too were read to him and he confirmed that the facts were true and before conviction he was warned of the consequences of admitting the charge and he maintained the plea and he was convicted and sentenced to 20 years. That the maximum sentence then was death and it is not a minimum sentence. That the court properly exercised its discretion and that there is no merit in the appeal.

5. As a first appellate court, this court will first analyse and re-evaluate the evidence which was before the trial court and come to its own conclusions bearing in mind that it did not see or hear the witnesses. (See **Okeno vs. Republic [1972] EA 32.**)

6. After considering the appellant's submission, his only issue is the sentence imposed by the court. He admits that he pleaded guilty but seeks a reduction of the sentence. I still have to consider if the plea was taken properly whether the conviction was proper and whether the sentence is excessive.

7. From the court record the court read the charge to the appellant in Kiswahili and he responded "True". Thereafter the facts were read to

him and he responded, "Facts are true". The trial court thereafter warned the appellant of the consequences of his plea and the record reads that the appellant maintained plea of guilty. Thereafter the appellant was convicted on his own admission. The appellant in mitigation told the trial court that he has children in school who depend on him and he prays for forgiveness. The court noted that he is a first offender, his plea in mitigation and that the offense is serious and warranted a deterrent sentence and imprisoned the appellant to 20 years.

8. The plea was taken in a proper manner. The trial court was cautious of the fact that the appellant. The plea was unequivocal. The appellant stated that the facts read to him were true. I find that the appellant's conviction was proper as the facts disclosed an offence of robbery with violence.

9. The penalty for the charge of robbery with violence as per section 296(2) of the Penal code is death. The death sentence was declared unconstitutional by the Supreme Court in the case of *Francis Karioko Muruatetu & another v Republic [2017] eKLR*. The trial court sentenced the appellant to 20 years. the appellant has asked this court to reduce the sentence that e is a first offender and is remorseful.

10. Considering the facts of the case, that the appellant pleaded guilty that he is a first offender I will consider reducing his sentence of 20 years to 15 years from the date of sentence. The conviction is affirmed. I reduce of 20 years to fifteen (15) years from the date of sentence, 18th February 2020. He has a right of appeal.

Dated, signed and delivered at KISII this 8th day of October 2020

R. E. OUGO

JUDGE

In the presence of:

Appellant in Person

Mr. Otieno Senior Prosecution Counsel Office of the DPP

Ms. Rael Court Assistant