



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**(CORAM: CHERERE- J.)**

**PETITION NO.65 OF 2018**

**BETWEEN**

**DICKSON SAMUEL ODHIAMBO.....PETITIONER**

**AND**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. **DICKSON SAMUEL ODHIAMBO**, (hereinafter referred to as the Petitioner) was on 14<sup>th</sup> May, 1998 convicted and sentenced to 10 years and six strokes of the cane for robbery with violence contrary to section **296(2)** of the Penal Code. Petitioner lodged an appeal **Nairobi High Court Criminal Appeal No. 116 of 1998** which was dismissed and the conviction and sentence were upheld. The petitioner subsequently appealed to the Court of Appeal in **Nairobi Criminal Appeal No. 148 of 2000** and the appeal was likewise dismissed, the conviction and sentence upheld and substituted with death sentence.

2. The petitioner has petitioned this court for resentencing. He urged the court to consider that he had reformed. He has presented a letter dated 20<sup>th</sup> March, 2019 from the Officer in Charge Kisumu Maximum Prison to the effect that he has undergone various courses and has reformed and been appointed a Trustee since 2004.

3. Ms. Gathu, learned counsel for the state urged court to consider that the robbery was committed by Petitioner and others who were armed with a homemade gun and pangas and that the victims were robbed and injured. The state proposed that the petitioner be resentenced to 10 more years over and above the years already served.

**Analysis and Determination**

4. The Supreme Court decision in **Francis Kariuki Muruatetu & Another v Republic & 5 others [2016] eKLR** declaring the mandatory death sentence unconstitutional has necessitated resentencing of all persons previously sentenced to the mandatory death sentence. In the case of **William Okungu Kittiny v Republic KSM CA Criminal Appeal No. 56 of 2013 [2018] eKLR**, the Court of Appeal applied the **Murutetu Case (Supra) mutatis mutandis** to the provisions of section **296(2)** of the Penal Code (**Chapter 63 of the Laws of Kenya**) which imposes the mandatory death penalty for the offence of robbery with violence and held that death was a discretionary maximum sentence.

5. I have considered the **Sentencing Policy Guidelines, 2016** and their application which is intended to promote transparency, consistency and fairness in sentencing (See **Michael Kathewa Laichena & Another v Republic [2018] eKLR**).

6. The maximum sentence for simple robbery is 14 years imprisonment. The mitigating circumstances in this case are that the petitioner could be considered a first offender. The facts from the record shows that the offence was committed by the Petitioner and others who were armed with a homemade gun, pangas and runigus and that the victim was injured.

6. Under the proviso to section **333(2)** of the **Criminal Procedure Code (Chapter 75 of the Laws of Kenya)**, the court is entitled to take into account the period the petitioner has spent in custody in determining the sentence. Petitioner has served 21 years since conviction.

9. I have considered judgments of Superior Courts that are intended to ensure consistency and fairness. In the case of **Wycliffe Wangusi Mafura v Republic ELD CA Criminal Appeal No. 22 of 2016 [2018] eKLR**, the Court of Appeal imposed a sentence of 20 years where the appellant was involved in robbing an Mpesa shop with the use of a firearm with which he threatened the attendant but was caught before he inflicted any violence on her. In **Bond David Onyango v Republic [2018] eKLR**, this court resentenced the Petitioner who had been in

custody for 20 years for the offence of robbery with violence that was aggravated by use of a firearm.

10. After considering all the mitigating and aggravating factors, the fact that the victims were injured and the fact that the petitioner has already served 21 years' imprisonment, I re-sentence him to period already served.

11. The Petitioner shall be set at liberty unless he is otherwise lawfully held. It is so ordered.

**DATED AND SIGNED IN KISUMU THIS 8TH DAY OF MAY 2019**

**T. W. CHERERE**

**JUDGE**

**Read in open court in the presence of-**

**Court Assistant** - Felix

**Petitioner** - Present in person

**For the State** - Ms Gatho