



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

(CORAM: CHERERE- J.)

PETITION NO.66 OF 2018

BETWEEN

MOURICE CHIEDO WOGA.....PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGMENT

Introduction

1. **MOURICE CHIEDO WOGA**, (hereinafter referred to as the Petitioner) was on 19th August, 1992 convicted and sentenced to death for robbery with violence contrary to section 296(2) of the Penal Code. Petitioner lodged an appeal **Nairobi High Court Criminal Appeal No. 1255 of 1992** which was dismissed and the conviction and sentence were upheld. The petitioner subsequently appealed to the Court of Appeal in **Nairobi Criminal Appeal No. 248 of 1997** and the appeal was likewise dismissed and the conviction and sentence was upheld. The sentence was later commuted to life imprisonment.

2. The petitioner has petitioned this court for resentencing. He urged the court to consider that he had reformed.

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 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 **Muruatetu 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 3 others who were armed with a firearm and pangas and that the victims were 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 about 27 years since conviction and was in custody for about one year during trial.

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 resented 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 and sexual assault on the victims.

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 27 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