



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL MISC. APPLICATION NO. 8 OF 2019

PAUL MULINGE.....1ST APPELLANT

FAROUK GITONGA.....2ND APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The appellants were charged with offence of robbery with violence contrary to section 296 (2) of the Penal Code.
2. Particulars being that on 3/10/2011 at Bura Location, Tana River District, Tana River County being armed with offensive weapons namely; knife jointly robbed Pius Munyua of his motorcycle Reg. No. KMC 822F valued at Ksh.82,000/=, mobile phone make Nokia 6080 valued at 4,500/=, cash Ksh.1,600/= and at the time of such robbery threatened to use actual violence to the said Pius Munyua.
3. They denied the charge and the matter went into a full trial and they were convicted and sentenced to suffer death. They were aggrieved by the decision and thus filed Criminal Appeals in **High Court Garissa No. 83 and 84 of 2012**.
4. The appeal in the High Court was dismissed, conviction affirmed and sentence confirmed.
5. The appellants were not happy and thus appealed to the Court of Appeal vide **Nairobi Criminal Appeal No. 131 of 2015**. The Court of Appeal affirmed conviction but agreed to tamper with the sentence in the spirit of Supreme Court case of **Muruatetu [2017] eKLR**. Thus the death sentence was set aside and the court referred the matter to the High Court at Garissa for re-sentencing.
6. The re-sentencing was to be done within 14 days from 22/3/2019 however as there was transition between the outgoing Judge and the incoming Judge, there was no Judge within the 14 days period. The incoming Judge reported on 1/3/2019 and went on leave to resume on 28/3/2019.
7. The duty of this court is to render the appropriate sentence after hearing the appellants' mitigations.
8. Paul Mulinge 1st appellant/applicant in mitigation stated that he has been in custody for 8 years. He was first offender and at the time of conviction he was 25 years. He has wife and 2 children. Both of his parents are dead. He has been repentant and remorseful. He has been totally rehabilitated and reformed. He has done various useful courses in prison which will enable him to be useful to himself, society and the community at large. He seeks the court to rule that the sentence already served to be enough.
9. Farouk Gitonga on his part pleaded in mitigation that he has been in custody for 8 years. He was 32 years when he was arrested. He was a first offender. He is repentant and remorseful. He has done various courses in prison which will enable him to be useful to himself and the society. He seeks court to direct that the period served to be adequate.
10. After considering the above mitigations and taking to account that the items robbed were almost all recovered, the circumstances of robbery was that violence was threatened but no injuries inflicted.
11. I find it appropriate to sentence the 2 accused persons to the period already served and therefore;

i) Order they be released forthwith unless otherwise lawfully held.

DATED, DELIVERED, AND SINGED IN OPEN COURT AT GARISSA THIS 22ND DAY OF JULY, 2019.

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CHARLES KARIUKI

JUDGE