



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NANYUKI**

**CRIMINAL APPEAL NO 46 OF 2016**

**ROBERT MWANGI MUGWE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(Upon application vide Nanyuki HC Criminal Petition No 16 of 2018)***

**RE-SENTENCING**

1. The Appellant herein, **ROBERT MWANGI MUGWE**, was convicted by the trial court of **robbery with violence** contrary to **section 296(2)** of the **Penal Code**. On 29/04/2016 he was sentenced to death. His appeal to this court against both conviction and sentence was dismissed vide a judgment herein dated and delivered on 14/02/2018 (Kasango, J). It is not clear if he has lodged a second appeal to the **Court of Appeal**.
2. The Appellant's death sentence was subsequently commuted to life imprisonment by executive clemency.
3. The Appellant has now applied vide this court's **Criminal Petition No 16 of 2018** to be re-sentenced. This is upon the strength of the decision of the **Supreme Court of Kenya** in its **Petition No 15 of 2015 (as consolidated with Petition No 16 of 2015), Francis Karioko Muruatetu & Another - VS - Republic 7 Others, [2017] eKLR**. In its judgment delivered on 14/12/2017, that apex court declared as unconstitutional the mandatory nature of the death sentence under **section 204** of the Penal Code. The Court however stated, for avoidance of doubt, that the declaration does not disturb the validity of the death sentence as contemplated under **Article 26(3)** of the **Constitution of Kenya, 2010**. The Court remitted the matter to the **High Court** for re-sentencing of the petitioners.
4. By parity of reasoning, there is no doubt that the aforesaid declaration of the Supreme Court regarding the mandatory nature of the death sentence under section 204 of the Penal Code applies in equal measure to the mandatory nature of the death sentence under section 296(2) of the Penal Code.
5. This court in its criminal appellate jurisdiction has the same sentencing powers as the trial court. See **section 354** of the **Criminal Procedure Code**. I therefore considered it more expedient to re-sentence the Appellant rather than send him down to the trial court.
6. I have considered the submissions of the Appellant as well as those of the learned prosecution counsel. I have also perused the record of the trial court in order to understand the circumstances surrounding the commission of the offence.
7. The Appellant was in company with three other robbers. They were armed with pangas. Though the complainant and her children were threatened with violence they were not physically harmed. That is not to lower in anyway the emotional and psychological trauma that they must have suffered.
8. When he was convicted and sentenced the Appellant was a young man aged about 29 years. He was a first offender.
9. In these circumstances I do not consider that the sentence of death meted out to the Appellant was appropriate. A substantial prison term would have better served the ends of justice.
10. I will in the event set aside the sentence of death imposed upon the Appellant and substitute therefor a term of imprisonment of twenty (20) years from the date he was sentenced by the trial court – that is on 29/04/2016. It is so ordered.

**DATED AND SIGNED AT NANYUKI THIS 17<sup>TH</sup> DAY OF JULY 2019**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 18<sup>TH</sup> DAY OF JULY 2019**