

REPUBLIC OF KENYA

AT THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPL. NO. 131 OF 2019

MARTIN ODUOR LANGO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant has approached this court seeking a review of the sentence after resentencing hearing. He was charged at Kibera Law Courts vide Cr. Case No. 912 of 2006 with the offence of robbery with violence and alternative charge of handling stolen property. At the trial he was sentenced to suffer death. Both appeals in the High Court and Court of Appeal were dismissed. Following the decision of the Supreme Court in the case of **Karioko Muruwatetu and Another vs Republic (2017) e KLR**, the death sentence was set aside and substituted with life imprisonment. Aggrieved by the sentence of the learned magistrate Hon. Kamau SRM, delivered on 3rd January, 2019, in Misc. Criminal Application No. 278 of 2017, he seeks a review of the sentence by urging the court to set the life imprisonment aside.

2. Before this court he seeks leniency stating that he fell into crime after joining a group of young men who used to commit crime. He stated that he was led into crime by peer pressure. He submitted that he has since reformed and for the thirteen and a half years he has been in custody has served as sufficient punishment. He added that he had trained in football coaching and alternative to violence courses which would enable him to live a life free of crime. Furthermore, he has been promoted as a trustee in prison. He also displayed a recommendation letter from the in charge of prison indicating that he had reformed. He also is a leader of Catholic Church in prison, an indicator that he has committed to living a crime free life.

3. It was the Applicant's submission that his health was deteriorating in prison as evidenced by a medical report from prison dated 31st May, 2019 that he suffers from peptic ulcers disease. He has urged the court to give him a second chance to reorganize his life and set a good example to his family.

4. Learned State Counsel, Mr. Momanyi did not oppose the application stating that the penalty was harsh and excessive and that the Applicant had shown remorse.

5. I have considered the respective submissions which the court must weigh against the circumstances of the case. It is a case in which the Applicant together with others while armed with dangerous weapons namely, pistols in Kitengela robbed Asmahan Schmid of a motor vehicle, assorted jewelry, sewing machine, Tv set, a DVD player, a pistol and six rounds of ammunition, a lap top, 4 binoculars, 6 cameras, 8 mobile phones, one diamond ring, 1 bracelets, 5 men's watches, assorted men clothes, 1 chyomen, 1 ear phone, 2 perfumes, 2 radio speakers, a Swiss Franc and Cash Kshs. 90,000/= everything valued at Kshs. 700.000/=.

6. It was said that during the time of the robbery they used actual violence against the said complainant. There is no doubt therefore that the offence was serious. The circumstances of the case were also serious in that the assailants threatened to shoot the family of the complainant and in some instance threatened to stab his son with a knife. Therefore, the mere fact that the Applicant is remorseful cannot be wished away against the purpose of a sentence.

7. My view is that although life imprisonment is harsh and excessive in the circumstances, a sentence commensurate with the offence must be imposed. In this case, the stolen goods were not recovered. I set aside the life imprisonment and substitute it with 20 year's imprisonment commencing from the date of arrest.

Dated and Delivered at Nairobi This 9th day of October, 2019.

G.W.NGENYE-MACHARIA

JUDGE.

In the presence of:

1. Applicant in person
2. Mr. Momanyi for the Respondent.