



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL APPEAL 618 OF 2007**

**IBRAHIM ANAKEYA.....1<sup>ST</sup> APPELLANT**

**DOUGHLAS NYANGWARA MAOBE.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Appellants were charged with the offence of robbery with violence contrary to section 295 as read with section 296(2) penal Code. The particulars were that they jointly with others not before court on the 15<sup>th</sup> day of August, 2007 at Prime Tech Industries along Nanyuki Road Industrial Area in Nairobi within Nairobi Area, while armed with offensive weapons namely crowbars, stones and rungs robbed Moses Mulinge Muthembwa of assorted items all valued at Kshs. 190555.20/- and immediately before or immediately after the time of such robbery used actual violence on the said Moses Mulinge Muthembwa. They were each sentenced to suffer death. The Appellants appealed in the High Court and Court of Appeal and both appeals were dismissed. Following the decision of the Supreme Court in the case of **Francis Karioko Muruatetu & Another (1917) eKLR**, the Court of Appeal referred them to the High Court for resentencing.

2. The Appellants appearing in person before me made oral submissions. It was the 1<sup>st</sup> Appellant submission that his family is not doing well. He submitted that his last born is in standard 8. As well, that the other two girls finished Form IV but obtained C grade due to attending school intermittently. He submitted that he was the sole-bread winner of his family. He also urged the court to consider that he has health problems since he had a surgery that he is still recovering from. He finally asked the court to consider that the complainant was not injured as he and his accomplices only tied him up and that they were only armed with rungs (clubs) and stones.

3. The 2<sup>nd</sup> Appellant admitted that he indeed committed the offence. He urged the court to give him a second chance in life. It was his submission that his family fell apart as soon as he was jailed. It was his submission that his last born dropped out of school and that his wife fled. He asked the court to also consider that he was a first offender.

4. The Respondent was represented by Miss Nyauncho. She was not opposed to the Appellants' application. She urged to consider setting aside the death sentence and hand the Appellants another sentence. It was her submission that the Appellants were armed with less dangerous weapons, that they did not injure the complainant and they have been incarcerated since 2007. As such, they have been rehabilitated and reformed.

5. The court ordered pre-sentencing reports for each of the Appellant. They were filed on the 24<sup>th</sup> July 2019. It was the probation officer's report that the 1<sup>st</sup> Appellant was rehabilitated and reformed. Further, that on account of his health and change of outlook on life and the struggling children and wife that the court should consider favorable sentence. It reflected that his wife and uncle needed him to return home for purpose of taking care of his family.

6. The 2<sup>nd</sup> Appellant was also deemed to have reformed. Further that his family was ready to receive him back into the family. His sister was interview for this purpose. She confirmed that the Appellant's wife had since remarried on account of his incarceration. It was urged that he benefits from resentencing. The probation officer was unable to trace the victim to get their views on this application.

7. I find that the objectives of sentencing particularly community denunciation, retribution, deterrence and community protection have been met.

8. The **Muruatetu v Republic [2017] eKLR** case directs the court to consider the remorsefulness, admission of guilt, the fact that the complainant was not injured and the time that the Appellants have served as suitable grounds on which favourable sentences can be given. I consider ten years imprisonment in the circumstances to be sufficient sentence. The same has already been served. I therefore order that the Appellants be forthwith set free unless otherwise lawfully held. It is so ordered.

**Dated and Delivered at Nairobi This 6<sup>th</sup> November, 2019.**

**G. W. NGENYE-MACHARIA**

**JUDGE.**

**In the presence of:**

1. 1<sup>st</sup> Appellant in person

2. 2<sup>nd</sup> Appellant in person

3. Miss Akunja for the Respondent