



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CONSTITUTIONAL PETITION NO. 13 OF 2019

JARED OTIENO AMBEGOPETITIONER

VERSUS

REPUBLIC..... RESPONDENT

(Being an appeal from the sentence and conviction of Bondo Principal Magistrate's Court Criminal Case No. 966 of 2010 dated 24.11.2011 before Hon. P.W. Mutua – Senior Resident Magistrate)

JUDGMENT

1. The Petitioner herein **Jared Otieno Ambego** was convicted and sentenced to suffer death for the offence of **Robbery with Violence contrary to Section 296(2) of the Penal Code** on 24.11.2011 by Bondo P.M's Court Hon. P.W. Mutua, SRM in Criminal. Case No. 966 of 2010.
2. Aggrieved by the said conviction and sentence, the Petitioner appealed to the High Court, Kisumu, vide Kisumu High Court Criminal Appeal No. 192 of 2011.
3. That appeal was heard and dismissed, on conviction but sentence was reduced to 15 years imprisonment. Still aggrieved by the decision of the High Court, the Petitioner appealed to the Court of Appeal popularly known as the "**Kenya Court**" at Kisumu vide CRA 30/2013 which appeal was dismissed once again and the ***Court of Appeal reinstated death sentence imposed by the trial Court.***
4. The Appellant was left remediless awaiting execution of the death sentence which he had nearly escaped at the High Court stage.
5. In the year 2016, the death sentence imposed on the Petitioner was commuted to life imprisonment by his Excellency the President.
6. As he awaited for his fate, light shone at the end of the tunnel when the apex (Supreme) Court of Kenya on 14.12.2017 held in **Francis Karioko Muruatetu Vs. Republic Supreme Court Petition Nos. 15 and 16 of 2015** that mandatory death Penalty was unconstitutional in so far as it denied an accused person convicted of a "capital" offence an opportunity to mitigate and that such statutory provision deprived the trial Court of the discretion to mete out appropriate sentence, having regard to the circumstances of each case.
7. While in prison, the Petitioner learnt many trades and lives' skills as per the testimonials that he exhibited in Court.
8. He is 36 years old and since his arrest in May 2010 which is 9 ½ years ago he has been behind bars. He was a first offender and married.
9. He has a recommendation from the Officer in charge Kisumu Maximum Prison dated 22.4.2010 showing that he holds a certificate in Paralegal from Kituo cha Sheria and a certificate in Industrial Technology from RODI Kenya.
10. He is said to have added responsibility of training, supervising and grading other inmates in the general discipline. He is highly recommended for worthy and overall qualifications.
11. The Petitioner was jointly charged with George Onyango Weke and were armed with an A.K. 47 Rifle, Pangas, Rungus and Iron Bars. This was on 11.5.2010. They were apprehended on 19.5.2010 and arraigned on 31.5.2010.
12. The Petitioner and his co-accused faced an alternative charge of handling stolen property contrary to section 322 of the Penal Code, Second, third and fourth counts of Robbery with Violence against several other complainants.

13. This Court after hearing the submission and mitigation by the Petitioner saying that he regrets the offence, that he had been married and that his children are suffering ordered for a social inquiry report. The Probation Officer, Siaya noted the file on 9.10.2019 but to date no report has been filed. Nonetheless, this Court would not be bound by such report save to inform the Court of the Petitioner's antecedents and his suitability for various alternative sentences.

14. I have considered all the mitigation, the recommendation by Prison Authorities and the circumstances under which the offence was committed. I note that the Petitioner was in the company of others and were armed with lethal weapons, which they possessed for purposes of committing heinous crimes. They committed 4 spates of robberies on different complainants. They terrorized the complainants and injured them. They also took away various properties of the complainants.

15. The offence of robbery with violence is traumatizing to its victims who most at time are left with permanent scars. If they are not rendered invalids because of injuries inflicted, they are left dead, leaving behind dependants who have nowhere to go.

16. Robbery is motivated by greed and the insatiable thirst to reap where one has not sown. The offenders simply want to 'work' hard on their fellow human beings by terrorizing and killing or taking away what others have earned the hard way.

17. The robbers want to become rich overnight while their victims have dedicated their lives earning through hard work. Not all people must be the same in life, just like the five fingers and five toes on each upper and lower limbs.

18. Live and let others live should be the principle. Do to others what you would wish to be done unto you. Robbers are heartless beings who are out to kill, maim and get whatever they want by use of force, to get rich quick. It is for that reason that the law provides for harsh penalties to deter or keep away from the society such social misfits.

19. The Petitioner has been in prison for 9 years but this court doubts that at 36 years he has learnt anything that would deter him from re-offending. This is notwithstanding the prison's report. I had the opportunity to see and hear him in resentencing and I am not persuaded that he wore the demeanor of a reformed and rehabilitated person or one who is truly remorseful for the heinous offence committed which made the Court of Appeal upgrade his sentence from 15 years imprisonment to death sentence.

20. The Petitioner has not been involved in any religious teachings which in most cases help one to change their character and to reform. Learning Para-legalism and Industrial soap making is not evidence of reform. I am not satisfied that the Petitioner is reformed or that he is remorseful. He simply now regrets the offence because he has a chance to be resentenced.

21. For the above reasons and considering that the Petitioner and others were armed with lethal weapons, I shall resentence the appellant to serve fifty (50) years in prison, to be calculated from the date of his arrest on 31.5.2010.

22. Orders accordingly.

Dated, Signed and Delivered at Siaya This 19th day of November, 2019.

R.E. ABURILI

JUDGE

In the presence of:

The petitioner in person

Mr. Ngetich Prosecution Counsel for the Respondent

CA: Brenda and Modestar