



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 147 OF 2019

SIMON KARIUKI MUREITHI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant was the accused person in the Chief Magistrate's Court at Nairobi in Cr. Case No. 2822 of 1999. He was charged with four counts. In count 1 he was charged with robbery with violence contrary 296(2) of the Penal Code. The particulars were that on 1st day of November, 1999 at Brookside Drive, Spring Valley within Nairobi Area, jointly with another not before court being armed with a dangerous weapon namely a pistol robbed Police Constable Edward Sang of his PATCHET SINO 1369 valued at Kshs. 30,000/= and immediately before or immediately after the said robbery used actual violence to the said Edward Sang.

2. In Count II he was charged with being in possession of a firearm without fire arm certificate contrary to Section 4(1) of the Firearms Act. The particulars were that on the 1st day of November, 1999 at Brookside Drive, Spring Valley within Nairobi Area jointly with others not before court had in possession of US Army COLT Pistol Serial Number 154451 without firearm certificate.

3. In Count III, he was accused of being in possession of ammunition without a firearm certificate contrary to Section 4(2) of the Firearm Act. The particulars were that on the 1st day of November, 1999 at Brookside Spring Valley within Nairobi Area jointly with others not before court had in possession four rounds of ammunition of 45mm caliber without firearm certificate.

4. In Count IV, he was charged of preparation to commit a felony contrary to Section 308 (1) of the Penal Code. Particulars were that on the 1st day of November, 1999 at Brook side Drive Spring Valley within Nairobi Area jointly with others not before court were found armed with a pistol with intent to commit a felony namely robbery.

5. After a full trial, the Applicant was convicted in counts I, II and IV. In count I, he was sentenced to suffer death whilst in counts II, and IV, he was sentenced to serve 18 months imprisonment. The court further ordered that sentences would run consecutively.

6. Applicant has approached this court seeking a review of his sentence after re-sentencing by the Magistrate's Court. The resentencing follows the Supreme Court decision in the case of **Francis Karioko Muruwaitetu Vs Republic [2017] eKLR** in which mandatory death sentences were declared unconstitutional. He filed High Court Misc. Cr. Application No. 443 of 2018 seeking resentencing in line with the Muruwaitetu case. The High Court referred the matter to the Magistrate's Court for this purpose. In a ruling delivered by Hon. P. Ooko, PM on 25th January, 2019 the court reconfirmed life imprisonment. It suffices to state that in his submission the Applicant had informed the court that his death sentence had been commuted by his Excellency the President to life imprisonment. Therefore, the learned magistrate did not vary the sentence at all. Being dissatisfied with the ruling of the learned trial magistrate, the Applicant now seeks a variation of the life sentence to a more lenient sentence.

7. Before the magistrate's Court the Applicant pleaded that he was arrested when he was only 21 years old and has since reformed. He submitted that he had a family who solely depended on him. Furthermore, he had been in remand for the entire duration of the trial. He pleaded remorse stating that the 20 years he has been in custody was sufficient punishment.

8. Learned State Counsel, Mr. Momanyi did not oppose the application in principle but urged the court to consider that the victim in the offences who was a police officer was hurt. His view was nevertheless that the 20 years the Applicant was cumulatively in custody was sufficient punishment.

9. I have accordingly taken into account the respective submissions and note with regret that the learned magistrate who did the resentencing failed to evaluate the circumstances of the case, the aggravating and mitigating circumstances. I have regard that a pistol was used and the

victim who was a police officer was hurt. However, no death was occasioned. I underscore that a sentence must serve one major purpose of deterrence. For the 20 years that the Applicant has been in remand, in my view, is sufficient punishment to deter him from recidivism.

10. I accordingly find that the application has merit. I set aside the life imprisonment and substitute it with an order that the Applicant has served sufficient punishment. I order that he be forthwith set free unless otherwise lawfully held. It is so ordered.

DATED AND DELIVERED THIS 19TH DAY OF NOVEMBER, 2019

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Applicant in person.

2. M/s. Nyauncho for the Respondent.