



**Songole v Republic (Criminal Appeal 19 of 2021)
[2025] KEHC 15017 (KLR) (22 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15017 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL APPEAL 19 OF 2021
JN KAMAU, J
OCTOBER 22, 2025**

BETWEEN

JACKSON SONGOLE APPELLANT

AND

REPUBLIC RESPONDENT

RULING

Introduction

1. In its decision that was delivered on 30th April 2025, this court relied on the case of Mbugua & 6 Others vs Attorney General & 3 Others (Constitutional Petition E002 & E003 of 2024 (Consolidated)) [2025] KEHC 1248 (KLR) (24 February 2025) (Judgment) wherein this very court held that it was discriminatory to deny offenders who had been convicted of the offence of robbery with violence and attempted robbery with violence the right to have their mitigation during trial considered, while the non-capital offenders enjoyed that right.
2. It was in that regard that this court directed the Appellant herein to file his mitigation documents for consideration by this court. The Appellant herein filed his documents in support of his mitigation on 23rd May 2025. He and the Respondent herein did not file any Written Submissions. This Ruling is based on the oral mitigation the parties presented in this court.

Legal Analysis

3. The Appellant pointed out that he had been in prison for twelve (12) years since he was sentenced and had never been released on bond. He expressed remorse for having committed the offence. He explained that the period of his incarceration had enabled him reform as he had undergone many courses including Theology. He said that he was a changed man and sought to be given a second chance to reunite with his family. He promised not to repeat the offence.



4. On its part, the Respondent submitted that it appreciated the new jurisprudence in re-sentencing robbery with violence convicts. However, it invited the court to note that the circumstances under which the offence herein occurred were grave.
5. It asserted that the Appellant, jointly with others, robbed while armed with dangerous weapons, pangas and rungas. It added that during the commission of the offence, they injured one Richard Matitsa. It asked the court to be guided by the Judiciary Sentencing Policy Guidelines in the manner the offence was committed and the impact on the victim and his family. It asserted that the Appellant's sentence was lawful and urged the court not to interfere with the same.
6. According to the Pre-sentence Report of Mariam Korir, Probation Officer, Vihiga dated and filed on 9th June 2025, the Appellant was forty-eight (48) years old. He attended Mutsotso Primary School and dropped out of school in Class Seven (7) due to lack of school requirements. He stayed at home until when he attained the age of eighteen (18) years. He moved to Ukunda area in Kwale County in 1995 where he worked as a gardener at Diani Reef Hotel.
7. He returned home in 1999 and opened a car wash and also did farming as a source of livelihood. He was married and blessed with two (2) children but his wife left after his arrest. He was of good health but had a history of drug abuse and was an alcoholic. He lived a positive life in the community and had no history of criminality except this offence.
8. The Local Administration and the community opined that the Appellant had no criminal history, lived well in the community and was a source of casual labour. They believed that he was a young man and that the twelve (12) years in prison may have changed him to be a better person. They asked that his life sentence be reduced to a definite term and/or he be given a non-custodial sentence so that he could return home. The Probation Office opined that he was suitable for resentencing.
9. According to the remarks by the Prison Officer in-charge, Timothy Turunya, ASP, at Naivasha Maximum Security Prison, the inmate had demonstrated a sincere and consistent commitment to personal transformation and rehabilitation. He added that he was a devoted member of the Protestant church and actively engaged in spiritual programs including prayer, meditation and Bible study. He stated that the Appellant's moral and behavioural reform had been evident throughout his incarceration. He opined that the Appellant had potential for successful re-integration.
10. On the other hand, the victim was resentful explaining that he feared that if the Appellant returned home, his life would not be safe.
11. Notably, the principle of sentencing is fairness, justice, proportionality and commitment to public safety. The main objectives of sentencing are retribution, incapacitation, deterrence, rehabilitation and reparation. The Sentencing Policy Guidelines in Kenya have added community protection and denunciation as sentencing objectives. The objectives are not mutually exclusive and can overlap.
12. It was also important that the sentence communicate to the community, condemnation of his criminal act. The sentence would indirectly send a strong signal to deter would be offenders from committing such an offence. The sentence also had to be one that was hinged on retributive justice for the secondary victims.
13. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of his offence at the time of sentencing him, chances of the Appellant being reintegrated in the society would be next to impossible as there were possibilities of being harmed. Justice not only needed to be done but it had to be seen to be done.



14. The facts of the case showed that on the material day of 12th February 2012 at Erusui Village, Serem Sub-location in Hamisi District within Western Province, the Appellant, jointly with others, while armed with offensive weapons namely pangas and rungun, robbed Richard Masitsa of Kshs 3,500/= and at or immediately before or after the time of the robbery wounded the said Richard Masitsa.
15. As can be seen hereinabove, one of the objectives of sentencing and/or incarceration was majorly to rehabilitate offenders. Having perused the Pre-Sentence Report, this court was persuaded to find and hold that the same had been achieved herein as the Appellant herein had undertaken life skills that would enable him be re-integrated back to the society. This court also noted that the value of the goods that were stolen was also low. Even so, the victim had remained traumatised almost thirteen (13) years after the incident and was in fact scared that the Appellant would harm him if he was released from jail.
16. Accordingly, having considered the facts of this case, the Appellant's mitigation, the Prosecution's response thereto, the Pre-Sentence Report, and the recommendation letter by Timothy Turunya, the Officer in-charge Naivasha Maximum Security Prison, this court came to the firm conclusion that a reduction of his death sentence that was commuted to life imprisonment to a sentence of thirty (30) years imprisonment would be reasonable in the circumstances of this case.
17. As the Appellant's sentence was now determinate, this court was mandated to consider the period that he spent in remand while his trial was on going in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).
18. The said Section 333(2) of the Criminal Procedure Code provides that:-

“Subject to the provisions of section 38 of the Penal Code (cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody” (emphasis court).
19. Further, Clause 4.6.20 (ix) of the Judiciary Sentencing Policy Guidelines provides that:-

“The Sentencing Court shall be guided by the sentencing principles and objectives set out in Part I of these the Guidelines in all resentencing hearings. The following mitigating factors were set out by the Supreme Court as particularly relevant in a resentencing hearing:...

(ix) Time already spent in prison by the convict...”
20. The requirement under Section 333(2) of the Criminal Procedure Code was restated by the Court of Appeal in *Ahamad Abolfathi Mohammed & Another vs Republic* [2018] eKLR.
21. The Appellant was arrested on 13th February 2012. Although he was granted bond, he did not seem to have posted the same. He was sentenced on 25th September 2012. This was a period that ought to be taken into consideration while computing his sentence.

Disposition

22. Accordingly, the upshot of this court's decision was that although the Appellant's conviction remained undisturbed as it was safe, his sentence of death which was later commuted to life in an executive order of the President of the Republic of Kenya be and is hereby set aside and substituted with a sentence of thirty (30) years imprisonment which is to run from the date of the sentence of the lower court.



23. For the avoidance of doubt, the period between 13th February 2012 and 24th September 2012 be and is hereby taken into account while computing his sentence in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

24. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 22ND DAY OF OCTOBER 2025

J. KAMAU

JUDGE

