



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDAMA RAVINE**

**(SUB-REGISTRY)**

**CRIMINAL APPEAL NO. E06 OF 2024**

MATHEW TUITOEK KIBELLION..... APPELLANT

**-VERSUS-**

REPUBLIC.....RESPONDENT

**(Being appeal against conviction and sentence by Hon. Alice Towett (P.M) Eldama Ravine in criminal case No. E240 of 2023 delivered on 9.09.2024)**

**JUDGMENT**

1. The appellant was initially charged with the offence of causing grievous harm contrary to Section 234 of the Penal Code. The charge was later substituted with robbery with violence contrary to Section 296(2) of the Penal Code. The particulars were that on the 13th day of March 2023 at about 0300 hours at Mogotio Township in Mogotio Sub-County within Baringo County, the appellant robbed one **Kelvin Chepsergon** of an Itel mobile phone valued at Kshs. 1,500

and cash Kshs. 12,000, and immediately before or after the robbery used actual violence on the said Kelvin Chepsergon.

2. Upon full trial, the appellant was convicted and sentenced to thirty (30) years' imprisonment. The court further ordered that the period spent in custody be deducted from the sentence.
3. Dissatisfied with both conviction and sentence, the appellant filed the present appeal dated 20th September 2024. However, during hearing, he abandoned the appeal on conviction and proceeded to challenge only the sentence.

### **APPELLANT'S SUBMISSIONS**

4. Counsel for the appellant submitted that the only issue for determination is whether the sentence of thirty (30) years' imprisonment was manifestly harsh in the circumstances. He stated that the appellant and the complainant were from the same locality, Bartabwa Division, and were acquaintances working in Mogotio town. The appellant was initially employed as a kiosk attendant before joining the complainant in a butchery business that sourced goats under questionable circumstances.

5. A dispute later arose between the appellant, the complainant, and the complainant's brother over payment for goats supplied, leading to a fight on the morning of 13th March 2023. This incident formed the basis of the initial charge of grievous harm, later substituted with robbery with violence. The complainant's brother, who was to be charged jointly with the appellant, was subsequently injured in a cattle-rustling incident, leaving the appellant to face the upgraded charge alone.
6. During trial, the appellant sought reconciliation with the complainant, who agreed to forgive him upon payment of Kshs. 60,000. The appellant's relatives paid a deposit of Kshs. 25,000, but the reconciliation failed after the prosecution opposed it and the complainant did not attend subsequent meetings. The appellant believed the matter had been settled, which affected the manner in which he conducted his defence.
7. Counsel submitted that while Section 296(2) of the Penal Code prescribes death as the maximum penalty, jurisprudence following *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR and *Julius Kitsao Manyeso v Republic* [2021] eKLR grants courts discretion to impose appropriate sentences depending on the circumstances of each case.

8. It was contended that the appellant was a youthful first offender aged 21 years, and that the trial court failed to give due consideration to his mitigation. The court's finding that he was not remorseful merely because he maintained his version of events was said to be unfair, as the appellant may not have fully appreciated the meaning of mitigation.
9. The appellant's lack of prior convictions, willingness to reconcile, and partial payment to the complainant were cited as indicators of remorse and potential for reform. Counsel urged the court to consider that the purpose of sentencing is not solely retributive but also rehabilitative and restorative, as reflected in *Benard Kimani Gacheru v Republic* [2002] eKLR.
10. It was further submitted that the trial court erred by factoring in the period spent in custody before pronouncing the sentence, contrary to Section 333(2) of the Criminal Procedure Code, which requires such deduction after the sentence is imposed.
11. Counsel therefore urged the court to find that the sentence of thirty (30) years' imprisonment was manifestly harsh and to reduce it to a term that reflects proportionality, fairness, and the appellant's potential for reform.

### **SUBMISSIONS BY THE STATE**

12. Learned prosecution counsel, **Ms. Omari**, opposed the appeal, submitting that this being an appeal against sentence only, the thirty-year term imposed was lawful and, in fact, lenient given that the prescribed sentence for robbery with violence is death.
  
13. Counsel emphasized that the complainant suffered both physical and psychological harm and later succumbed to complications arising from the injuries inflicted by the appellant. She stated that the victim's family continues to suffer emotional distress and that the sentence imposed was fair and proportionate to the gravity of the offence.

### **ANALYSIS AND DETERMINATION**

14. I have considered the record of the trial court, the grounds of appeal, and the respective submissions by counsel. The appellant abandoned the appeal on conviction and now challenges the sentence of thirty (30) years' imprisonment imposed for the offence of robbery with violence contrary to Section 296(2) of the Penal Code.
  
15. The issue for determination is whether the sentence imposed upon the appellant was manifestly harsh or excessive in the circumstances of the case.

16. Section 296(2) of the Penal Code prescribes death as the maximum sentence for robbery with violence. However, following the Supreme Court's decision in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR and subsequent appellate jurisprudence, including *Julius Kitsao Manyeso v Republic* [2021] eKLR, courts are now guided by the principle of judicial discretion in imposing proportionate and individualized sentences depending on the facts and circumstances of each case.
17. The record shows that the appellant was a first offender aged about 21 years at the time of conviction. He expressed remorse and sought reconciliation with the complainant, and part payment of compensation was made before the reconciliation efforts collapsed. The trial court observed that the appellant was not remorseful, apparently because he maintained his version of the events; however, a restatement of innocence does not necessarily demonstrate lack of remorse, particularly where the offender is youthful and may not fully appreciate the implications of mitigation.
18. On the other hand, the complainant sustained serious physical injuries as a result of the assault forming the basis of the robbery charge. The offence involved violence at night and resulted in lasting harm to the victim. The trial court was therefore justified in treating the offence as grave and deserving of a deterrent sentence. Nonetheless, the court

was required to weigh the aggravating and mitigating circumstances to arrive at a proportionate outcome.

19. In *Benard Kimani Gacheru v Republic* [2002] eKLR, the Court of Appeal held that the appellate court will not interfere with sentence unless it is manifestly excessive, based on wrong principles, or the trial court overlooked relevant factors. Similarly, in *S.I. v Republic* [2022] KECA 116 (KLR), the Court restated that the sentence must serve the twin aims of proportionality and fairness.
20. In the present case, while the sentence of 30 years' imprisonment falls within the lawful discretion of the trial court, I find that the court did not sufficiently consider the appellant's youth, his status as a first offender, the partial compensation to the complainant, and the rehabilitative objectives of sentencing. The record also shows that the time spent in pre-trial custody was acknowledged, but there is no clarity whether it was factored before or after the sentence was imposed.
21. Taking into account the totality of the circumstances, the gravity of the offence, and the mitigating factors, I am persuaded that a sentence of thirty (30) years' imprisonment is manifestly harsh in the circumstances. A reduced but deterrent custodial term will meet the ends of justice.

22. From the foregoing, I am inclined to set aside the sentence of thirty (30) years' imprisonment and substitute it with a sentence of **twenty (20) years' imprisonment.**

23. **FINAL ORDERS:** -

- a. Sentence of 30 years imprisonment by the trial court is hereby set aside and substituted with imprisonment for 20 years.
- b. The period spent in custody prior to sentencing shall be computed and deducted pursuant to Section 333(2) of the Criminal Procedure Code.

**Judgment** delivered, dated and signed Virtually at Kabarnet this **13<sup>th</sup> of November 2025.**



.....  
**RACHEL NGETICH**  
**JUDGE**

**In the presence of:**

- CA Karanja.
- Ms. Omari for state.
- Mr. Chebii for Appellant.
- Appellant.