



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISC. CRIMINAL APPLICATION NO. E002 OF 2020

MUSA LESHORE LEMUNKE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

1. The applicant was sentenced to suffer death after he was found guilty together with his co-accused on two counts of robbery with violence contrary to **Section 296(2) of the Penal Code** on 25th February 2011 in the Criminal Case No. 696 of 2010. The applicant together with others robbed Samuel Mwaura Mungai and Antony Wambugu Kimani on 29th January 2010 at Katakala area in Narok North District within the Rift Valley. He filed his appeal to the High Court in Criminal Appeal No. 66 and 68 of 2011 and the same was dismissed. The applicant together with his co-accused filed an appeal to the Court of Appeal which they later abandoned.
2. The application before this court is to reconsider resentencing following the Supreme court's decision in the now famous case of **Francis Muruatetu & another v. Republic, no 15 and 16 of 2015**.
3. In his submission the applicant has pleaded that he was a first offender and he has been in custody for 9 years where he has greatly reformed and thus he was praying for a second chance.
4. He said that he was in custody from 27th July 2010 and all through the trial until the conviction day on 25th February 2011 as he was unable to raise bond though granted by the court. He submitted that he was thus remorseful having learned his hard lessons in prison and he would be useful in the society if granted a second chance.
5. The learned state counsel opposed the application. He submitted that the applicant's reliance on the principles for re-consideration of sentence as espoused in the Muruatetu case would not suffice in this case as the offence committed was serious and the court should not alter the sentence commensurate with the two counts. He submitted the applicant had not indicated what he had done while serving for 9 years in prison or what skills of life he had acquired. He submitted that he did not object to the time spent by the applicant in prison and the applicant's request for the probation officer report to be availed.
6. I have perused the record and clearly it is apparent that applicant together with his co-accused committed the offence of robbery with violence which in itself is a capital offence hence the prescribed death sentence. Further, the import of punishment as provided in our statute books is to try as much as possible ameliorate the suffering of the victims. Nonetheless it is meant to somehow compensate for the loss by having the offender punished. In my view the applicant cannot benefit from the Muruatetu decision as the Supreme Court clearly directed on 6th July 2021 that the same only applied to murder cases.
7. The application can be considered however on the grounds that the applicant was a first offender and holding him in custody for life and without a definite period may not be efficacious. It is noted that he has been in custody from 27th July 2010 to date. The court agrees with the learned state counsel that there is nothing exhibited by the applicant that he has trained or learned while in

prison.

8. He however depending on his level of education and interest can still train while in custody. The court nonetheless shall grant him another opportunity.

9. The application is hereby allowed and the applicant sentence of life imprisonment is hereby reduced to **20 years from 27th July 2010**. Hopefully before being set free he shall have trained at least for some meaningful course so that he will not relapsed into another round of crime.

10. Orders accordingly.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 3RD DAY OF MARCH 2022.

H K CHEMITEL.

JUDGE



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