



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL CASE NO. E006 OF 2020[MURDER]

CORAM: HON. R.E. ABURILI, J

STATE.....PROSECUTION

VERSUS

JOHN OCHIENG OCHIENG....ACCUSED

RULING ON SENTENCE

1. Vide judgment delivered on 16/11/2021, the accused herein John Ochieng Ochieng was convicted of the offence of murder of Catherine Anyango Ochieng, contrary to section 203 as read with section 204 of the Penal Code. This was after a full trial. As his counsel Mr. Ochieng Ochieng was not present due to indisposal, the court directed that sentence be meted after mitigation and a presentence report being filed by the probation officer, Siaya. I have considered the mitigations by the accused personally and through his counsel Mr. Ochanyo holding brief for Mr. Ochieng Ochieng Advocate. I note that from the prosecution side, they have no previous criminal records of the accused hence he is deemed to be a first offender.

2. The accused is a young man aged 32 years old. He is a first offender. The deceased was his stepmother. The accused was married but his wife is said to have left him due to domestic and gender based violence. He says that he has 3 children who are in custody of an 86-year-old neighbor and that his wife died in April 2021 when delivering a baby who survived. He is remorseful.

3. From the evidence adduced on record, the deceased was raped, strangled and poisoned before she was rescued and taken to hospital but she succumbed. However, the poor preservation of her remains led to non-detection of the poison that she was given as per her statement made to the police prior to her death. No doubt, this was a gender based violence case.

4. From the presentence report, the accused was married but was very cruel to his wife who kept going back to her parents. There is no report that she is dead as stated by the accused person herein in his mitigation that she died in April 2021 while delivering a baby who survived and is in dire need, or that his children are being kept by an 86-year-old neighbour.

5. There is no justification why the deceased was murdered in such a gruesome manner. Life is inviolable and each person has their right to life guaranteed under Article 26 of the Constitution.

6. I have taken into account the above circumstances of this case, the presentence report, the Judiciary Sentencing Policy Guidelines 2016 and objectives of sentencing and punishment of offenders namely:

(a) Retribution: To punish the offender for his/her criminal conduct in a just manner.

(b) Deterrence: To deter the offender from committing a similar offence subsequently as well as discourage other people from committing similar offences.

(c) Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.

(d) Restorative justice: To address the needs arising from criminal conduct such as loss and damages.

(e) Community protection: To protect the community by incapacitating the offender.

(f) Denunciation: To communicate the community's condemnation of the criminal conduct.

7. I have given equal consideration to the **Francis Muruatetu & Another v Republic [2017] eKLR** decision where the Supreme Court declared that the mandatory death sentence in murder cases was unconstitutional in so far as it deprived the trial court of discretion to impose appropriate sentence having regard to the circumstances of each case and the mitigations by the convict.

8. Although punishment for Murder is death as stipulated in Section 204 of the Penal Code, which sentence is nonetheless lawful taking into account the stipulations in Article 26 of the Constitution and the decision in the **Francis Muruatetu (supra case)**, I find and hold that the accused person herein deserves a deterrent sentence to be kept away from the rest of the society and for the protection of the community because he is an extremely dangerous person who does not value the lives of others. He raped and strangled his own stepmother who was his caregiver and to date, he has not given any reasons for doing that to her. He is a cruel person and although he is a first offender and claimed to be remorseful, I did not see the remorse from his appearance. I hereby exercise discretion and sentence the accused person to serve life imprisonment.

9. Further, as the accused claims that his minor children are in dire need of care and protection, I direct the County Children's Officer, Siaya County, to visit the home of the accused and establish the condition in which the said children are said to be living under and take all measures that are necessary for the promotion and protection of the rights of children in need of care and protection and report to the Children's Court at Siaya for further necessary orders.

10. I so order.

11. The accused has a right of appeal within 14 days of today.

12. File closed.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 25TH DAY OF JANUARY, 2022

R.E. ABURILI

JUDGE