



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**

**CRIMINAL CASE NO. 12 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DANIEL NDEGWA WACHIRA.....ACCUSED**

**RULING ON SENTENCE**

1. The accused was convicted of the offence of murder on 03/03/2022 contrary to Section 203 as read with Section 204 of the Penal Code.
2. The court directed that a pre-sentence report be filed. The ten-page report was filed on 14/03/2022 from the County Probation Office.
3. The offence of murder carries death sentence under Section 204. Although the law has not been amended it is trite law that the **Francis Karioko Muruatetu & Another –Vs- Republic Supreme Court Petition No. 15 of 2015** changed the law on death sentence in that the mandatory nature of death sentence was declared unconstitutional. This means that depending on the circumstances of each case and antecedents of the accused, the court in murder cases must not impose the death penalty. An accused may be sentenced to a term of imprisonment or to a non-custodial sentence depending on the circumstances and antecedents of the case.
4. I have perused the pre-sentence report and noted that it is stated that there is hostility among the home community against the accused person. The Assistant Chief feared that the community could harm the accused if he is released on bond. He had to escape from his home at Umbui village Othaya to go and live in Nyahururu with his family because the local community was hostile. He also closed his carpentry workshop at Nyeri due to hostility of the villagers in his home area at Umbui village. The chief further states that there has been great tension in the village after the offence was committed. His house was burnt down after the commission of the offence.
5. The report did not recommend a non-custodial sentence but left the matter to the court to decide.
6. I have considered the contents of the report, the mitigation of the accused and the fact that he is a first offender. The fact that the deceased was slashed with a panga and died of the injury over a very minor disagreement is also noted. This was loss of an innocent life that left the victim's family traumatized and wanting after losing the only breadwinner of the family. The report states that the children of the deceased have to be assisted through CDF bursaries for fees. It is further stated that the community had to build a house for the widow of the deceased through fund raising.
7. Having considered all the foregoing, I am of the considered view that the accused is not suitable for non-custodial sentence. In fact, he deserved a deterrent sentence to discourage would-be offenders in society.

**F. MUCHEMI**

**JUDGE**

Sentence

The accused is hereby sentenced to serve ten(10) years imprisonment right of Appeal.

**DELIVERED, DATED AND SIGNED AT NYERI THIS 31<sup>ST</sup> DAY OF MARCH, 2022**

**F. MUCHEMI**

**JUDGE**

**JUDGEMENT DELIVERED THROUGH VIDEOLINK THIS 31<sup>ST</sup> DAY OF MARCH, 2022**