

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 80 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

POLYCARP OCHIENG AMIMO.....1ST ACCUSED

KEN OCHIENG OGOLLA.....2ND ACCUSED

RULING ON SENTENCE

Polycarp Ochieng Amimo, the 1st accused, and Ken Ochieng Ogolla, the 2nd accused, are jointly charged with the murder of Dennis Minani Mwangi contrary to Section 203 as read with Section 204 of the Penal Code. The offence was committed on 14th June 2015 at Dandora Phase IV, Njiru Sub-County within Nairobi County. This court found them guilty of murder in the judgment delivered on 30th November 2020. The prosecution counsel informed the court after the delivery of judgment that there were no previous criminal records in respect of each accused person and asked the court to treat them as first offenders. She also asked for pre-sentence probation report.

In mitigation on behalf of the 1st accused, Mr. Otieno Learned Counsel, told the court he prays for leniency; that he is the sole bread winner for his family and has a wife who is pregnant; that his extended family look upon him for support and that he is involved in Community projects helping youths involved in drugs; that he is a member of Dandora Stadium Management Committee that is involved in stadium management and encouraging youths to engage in playing football instead of engaging in drugs. Mr. Otieno told the court that the 1st accused prays for leniency and non-custodial sentence.

In addition to mitigation by Mr. Otieno, the 1st accused addressed the court. He told the court that he thanked the court for giving him a chance to address it. He told the court to consider his circumstances that his father is sick.

On behalf of the 2nd accused, Mr. Otieno told the court that he too is the sole bread winner of his family; has a wife and daughter who rely on his for daily subsistence; that he too is a member of and chairs the Dandora Stadium Management Committee and runs a programme to encourage the youth to play football instead of engaging in drugs. The 2nd accused also asked for non-custodial sentence. The 2nd accused addressed the court. He asked for leniency and said that he is a peaceful man and highly regarded as a person of good character in the community where he lives. He thanked his parents for bringing him up well and said that his conscience is clear. He said that his life has stagnated due to this case and had to forgo many appointments. He said he expected a different verdict and asked for leniency.

The prosecution counsel on the other hand told the court during mitigation hearing that the deceased was a young man aged 22 years at the time of his death; that he was defenceless when he was attacked by the accused persons; that the accused persons used brutal force on the deceased; that the family of the deceased is still hurting; that no one has a right to take a life and that the accused persons deserve a stiff sentence in order for the family of the deceased to find closure. She asked for a long custodial sentence for each accused person.

I have read the probation reports filed on 15th December 2020 in respect of each accused person. In respect of the 1st accused, he has maintained his innocence and says that he cannot understand why he was implicated in this crime. The family of the victim are fearful that the 1st accused may harm them if released because they claim to have been threatened by him when he was released on bail.

The 2nd accused too maintains that he is innocent and cannot understand why he is implicated in this offence. Likewise the family of the victim fear for their safety if the 2nd accused is given non-custodial sentence.

What emerges from the probation reports is that the two accused persons still do not believe they are guilty despite this court finding sufficient evidence proving the charge against them beyond reasonable doubt. They are not remorseful since they both claim that they are innocent. This court considered all the evidence and found it satisfactory to prove a charge of murder against each of the accused persons. I have noted that none of them has shown remorse. I will proceed to pronounce sentence. The optimum sentence for murder is death by dint of Section 204 of the Penal Code. However the Supreme Court in **Francis Karioko Muruatetu & another v. Republic [2017] eKLR** gave courts discretion in sentencing the offenders charged with murder. Following this decision, courts now can hand different sentences other than death in murder cases. Given the circumstances of this case it is my considered view that justice will be served if each of the accused persons serves a terms of 15 years. I therefore sentence Polycarp Ochieng Amimo and Ken Ochieng Ogolla to serve 15 years imprisonment and order that this sentence starts to run from 30th November 2020, the date when they were placed in custody after being found guilty of murder in this case. This court has informed them of their right of appeal within 14 days from the date of this sentence. Orders shall issue accordingly.

Dated, signed and delivered this 13th day of January 2021.

S. N. MUTUKU

JUDGE