



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL CASE NO. 16 OF 2017[MURDER]

STATE.....PROSECUTION

VERSUS

JULIUS ODHIAMBO WAIREMBA ALIAS AYINGA.....ACCUSED

RULING ON SENTENCE

1. On 26/1/2021, this court delivered judgment in this matter returning a verdict of guilty against the accused person herein Julius **Odhiambo Wairemba alias Ayinga**. The accused was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. The information dated 31/8/2017 provides particulars of the offence to the effect that on 2nd and 4th April 2017 in Randago sub-location, South Alego location within Siaya County, the accused murdered John Odhiambo Ogony alias Nabii.
3. The accused pleaded not guilty but after a full trial this court found him guilty of the offence of murder as charged and convicted him accordingly.
4. The court then reserved sentence after mitigation and presentence Report. The Presentence report was however not filed. The same is nonetheless not mandatory.
5. According to the Prosecution, the accused could be treated as a first offender as there are no previous records.
6. In mitigation by Mr. Ochanyo and later by Mr. Ochieng Ochieng Advocate and the accused himself, the accused person pleads for leniency and is remorseful.
7. He has been in custody since his arrest in 2017 and that his long incarceration has introspected him. He is a family man. His wife died and left him with 5 children. He was a charcoal seller and the sole breadwinner for his family. He also lost his father and he fends for his aged mother who now takes care of his children but due to the accused person's long incarceration, his mother has developed health complications. According to his counsel, as there is no mandatory sentence, the court should consider meting out non-custodial sentence.
8. The Prosecution prays for a long term sentence on account that the accused murdered an innocent child who had not wronged him.
9. I have considered the mitigation by the accused and his counsel and the address by the prosecution counsel. I have also considered the circumstances under which the deceased was brutally murdered. His body was never fully recovered. Only body parts were recovered and the question is, why was he decapitated and mutilated? Did he deserve to die in such a cruel and degrading manner? whose sins was he paying for? Why did the accused person choose to kill the deceased and not any other person? What kind of revenge is this? The answer is simple. The deceased did no wrong. He did not deserve to die. His body was cut into pieces and it had to take DNA sampling to determine his parentage. The accused person is a brutal inhuman being. He acted without mercy and took away an innocent young life without any justification, reason being that he had been jilted by his lover, the deceased's aunt. That is not acceptable.
10. I have taken into account the above circumstances, the mitigations and objectives of sentencing as contained in the judiciary sentencing guidelines.
11. In my humble view, the accused does not deserve non-custodial sentence at all. I am aware that he has been in custody since his arrest in 2017. However, that period can be taken into account when sentencing since, as correctly stated by Mr. Ochanyo, there is no mandatory sentence. Sentence is in the discretion of the trial court, having regard to the circumstances of each case, mitigation and applying the guidelines or objectives of sentencing.

12. In my humble view, the accused person, from the manner in which he butchered and mutilated the body of the deceased, is a dangerous being. He needs to be kept away from the society where he is a danger to humanity. He requires rehabilitation and reformation in an institution. He must be kept away from the society for a longer period of time for the parents of the deceased to heal from the loss.

13. For the above reasons, I hereby sentence the accused person Julius Odhiambo Wairemba to serve forty (40) years imprisonment inclusive of the period he has been in prison custody since his arrest.

14. Right of appeal is explained and guaranteed.

15. File closed.

16. Orders accordingly.

Dated, signed and Delivered at Siaya this 29th Day of March, 2021

R.E. ABURILI

JUDGE

In the Presence of:

Mr. Kakoi, Principal Prosecution Counsel for the State

Accused person and his Counsel Mr. Ochieng Ochieng Advocate

Court Assistants: Modestar and Mr. Mboya