



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT GARISSA
CRIMINAL CASE NO. 17 OF 2014
REPUBLIC.....PROSECUTION
VERSUS
DAVID MWENDWA MULWA.....ACCUSED
SENTENCING ORDER

1. The accused person has been convicted of murder of 2 persons and was given opportunity to address court in mitigation after State stated that there were no previous records. Through his advocate he mitigated to the effect that: He is remorseful and regrets death of the 2 persons. He says he is 22 years old and has been in custody for 7 years as has appeared in court on 23/9/2014.

2. The 2016 Judiciary of Kenya Sentencing Policy Guidelines lists the objectives of sentencing at page 15, paragraph 4.1 as follows:

“Sentences are imposed to meet the following objectives:

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

II. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

III. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.

IV. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.

V. Community protection: To protect the community by incapacitating the offender.

VI. Denunciation: To communicate the community’s condemnation of the criminal conduct.”

3. In the case of **Nicholas Mukila Ndeti v Republic [2019] eKLR** the held that, **“the sentencing policy states at paragraph 4.2 that when carrying out sentencing all these objectives are geared to in totality, though in some instances some of the sentences may be in conflict.”**

4. The after going through mitigation tendered and the record herein, the court notes that the killed 2 innocents, elderly and defenseless persons with no apparent justification and unprovoked. He even disposed of their bodies in the pit latrine to conceal his heinous act .Thus accused deserves severe sentence. However, he will be sentenced to a custodial sentence in the circumstances of the case as death sentence is not mandatory.

5. The accused is thus sentenced to serve; in

Count 1: accused serve 40 years’ imprisonment

Count 2: the accused will serve 40 years’ imprisonment

The sentences to run concurrently with effect from 23/9/2014.

6. Right of appeal explained.

DELIVERED AND SIGNED AT GARISSA THIS 24TH DAY OF MARCH, 2021.

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C. KARIUKI

JUDGE