



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL CASE NO. 2 OF 2015

REPUBLIC.....PROSECUTION

VERSUS

MUSEE KIEMA.....ACCUSED

SENTENCING ORDER

1. The accused stands convicted of offence of murder under section 203 as read **with section 204** of the **Penal Code Cap 63 Laws of Kenya**.

2. There were no previous records hence he is to be treated as a first offender. He was afforded a chance to mitigate via his advocate and he stated to the effect that:

He is remorseful and regret death of the deceased. He says the dispute arose out of land matters. He has been in custody for 6 yrs.

3. The court notes that the accused armed himself with arrows and bow and brutally killed deceased on the basis of what he alleged to be an abuse she had hurled at him.

4. 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.”

5. 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.”**

6. I have looked at the mitigation tendered and evidence on record plus the fact that accused is a first offender and the period he has been in custody. I find that, the reason as to why he killed her is totally unjustified as he never established any evidence of provocation. The act of killing was grisly and totally merciless. However the circumstances of killing does not warrant death sentence but severe custodial sentence.

7. Thus the court sentences accused to 40 years imprisonment with effect from 9/3/2015.

8. Right of appeal explained.

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

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C. KARIUKI

JUDGE