



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL CASE NO. 26 OF 2018

CORAM: HON. R.E. ABURILL J

STATE.....PROSECUTOR

VERSUS

PATRICK KIPNG'ETICH YEGO.....ACCUSED

SENTENCE

1. On 29/3/2021 this court delivered judgment with a finding of guilty against the convict **Patrick Kipng'etich Yego**, upon convicting him for the offence of Murder contrary to Section 203 of the Penal Code. The court thereafter heard from the Prosecution Counsel that the accused is a first offender as the prosecution did not have any past criminal records on him. The accused and his counsel Mr. Ochanyo mitigated upon which this court ordered for a probation Presentencing Report to appreciate the social circumstances of the convict.
2. The said Presentence Report has been filed this morning and I have had the opportunity to read through it. It is a detailed report.
3. In his mitigation, the convict pleaded for leniency from the court. He is a Chief Inspector of Prisons and a married man. He is the sole breadwinner for his family and his elderly parents. He has no previous case of indiscipline while at work. He pleaded for non-custodial sentence so that he does not lose his job. In his own words, he submitted in mitigation saying that he is the first born in a family of ten children, and has 3 small children and his parents are aged. He has served the Prisons Service from 2002 to 2017 when he was interdicted following this Murder case.
4. In the Probation Officer's Presentence Report, the Probation Officer confirms that the convict is a first born in a family of ten children who had all gone to school courtesy of the convict's employment. In addition, the convict is the sole breadwinner for his aged parents (his father always attends court) and is before the court. The convict is married with 3 children all minors. His wife is said to have deserted him after his arrest and relocated to her parents' home, leaving the minor children with their grandparents and the convict during the time he was on bond.
5. The convict is said to be law abiding and respectful save for this Murder incident. The Probation Officer's Report records the convict giving the circumstances under which the offence took place and which, had the convict disclosed to this court in his defence, would have changed the course of the trial. According to the probation officer, the convict fired after riotous group of people who were demonstrating following the announcement of presidential election results and upon learning that President Uhuru had been declared the winner. The convict however became evasive in his defence instead of being forthright with the court.
6. The court appreciates that the offence occurred during some riots, according to the evidence tendered by the prosecution witnesses, following the announcement of the Presidential Election results in 2017 and that the convict was on standby duty assisting the police to maintain law and order. The incident took place at night and the Prosecution proved beyond reasonable doubt that it was the Ceska pistol which was assigned to the accused which was used to shoot the deceased. The deceased was no doubt one of the citizens who were unhappy with the Presidential Elections outcomes and was among other people demonstrating for justice to the electorate.
7. The deceased was married and left behind a wife and 2 children. The third child was born after his demise. The widow is said to have left the home one year later and she is remarried. The deceased's family leave it to court to mete out sentence in accordance with the law.
8. The convict is said to be very remorseful but he abuses alcohol and that is visible as at the time he was attending court, he looked emaciated due to alcohol intake. His short period in prison upon his bond being cancelled has in my view, from my observation, given him a better lease of life.
9. Having considered all the mitigation and presentence report and the fact that a previous life was lost in very unfortunate circumstances

which this court has taken into account, and considering the sentencing guidelines and objects of sentencing, it is worth mentioning that punishment for Murder as provided for under Section 204 of the Penal Code is death.

10. However, this position changed with the Supreme Court's pronouncement in the case of **Francis Muruatetu & Another Vs Republic [2017]** where the apex court pronounced itself that mandatory death sentence is unconstitutional in so far as it deprives the trial court of the judicial discretion to mete out appropriate sentence, having regard to the mitigation and circumstances under which the offence was committed.

11. I have heard the convict's touchy mitigation and taken cognizance of the circumstances under which the offence was committed. I have also taken into account the Judiciary Sentencing guidelines and objects of Sentencing as stipulated therein and in the **Francis Karioko Muruatetu (supra)** decision.

12. I take cognizance of the Guidelines on **Custodial Vs Non-custodial sentences** where it is clearly stated that in deciding what sentence to impose on the convicted offender, the court should also consider the offender's Responsibility to the third parties. The guideline states:

“Where committing an offender to a custodial sentence is likely to unduly prejudice others, particularly vulnerable persons who depend on him/her, a court should consider a non-custodial sentence in light of the gravity of the offence, if no injustice will be occasioned. Information of the offender's responsibility to third parties should be substantiated.”

13. In the instant case, the convict mitigated saying he is the sole breadwinner for his family of his aging parents (seen in court) and his 9 siblings and his wife who now deserted the home after the arrest of the convict, leaving her 2 children and a third child in the care of convict's parents.

14. Most of the siblings are in college and rely on the convict for their fees and upkeep. The convict's parents too rely on the convict for farm inputs. The offence committed was serious as loss of life is not a simple matter. The deceased's family lost one of their own. He was a family person too and therefore his family must be suffering in his absence.

15. Weighing all the above interests, and the fact that the convict is a first offender, I am persuaded that the convict deserves a non-custodial sentence.

16. I sentence the accused person **Patrick Kipng'etich Yego** to serve three years on Probation. However, should he be redeployed by his employer, he shall not be assigned any duty involving handling of firearms for a period of five years

17. Right of Appeal explained to the accused person.

18. Orders accordingly.

Dated, signed and Delivered at Siaya this 27th day of April, 2021

R.E. ABURILI

JUDGE

In the Presence of:

Accused person

Mr. Ochanyo Advocate for accused absent

Mr. Kakoi, Principal Prosecution Counsel

Court Assistants: Modestar and Mr. Mboya