



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

CRIMINAL CASE NO. 6 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

MKK.....ACCUSED

(Formerly Eldoret High Court Criminal Case No. 82 of 2012, R v MKK)

JUDGMENT ON SENTENCE

1. On 30th April 2021, I convicted the accused in respect of the offence of murder. The issue before me now is one of the appropriate sentence to be imposed upon him.
2. In sentencing the accused I have to take into account both the aggravating and mitigating factors.
3. Mr. Abwajo for the prosecution informed the court that the accused may be treated as a first offender. He also urged the court to take into account the circumstances under which the deceased met his death. He further informed the court that the deceased was the soul bread winner of his family, which consists of young children.
4. Mr. Abwajo also informed the court that the sentence of death may not be imposed upon the accused since he was a minor, when the offence was committed.
5. Mr. Chepkilot for the accused informed the court that the accused is remorseful. He also informed the court that the accused was minor when the offence was committed.
6. He further informed the court that the accused is a young and unmarried person with a bright future. He has therefore urged the court to be lenient and to impose a non-custodial sentence.
7. I find as aggravating the following factors. A life of a 39 years old deceased has been lost. I also find that the accused was the aggressor. Furthermore, I further find that after fatally injuring the deceased, the accused threatened prosecution witnesses who wanted to administer first aid to him. One of those witnesses was a General Service Unit (GSU) Police Officer. This forced those witnesses to leave the deceased unattended. Finally, I find that the children of the deceased have been rendered fatherless.
8. The mitigating factors include the following. First, the accused is a young man who was a minor when the offence was committed. He is the first offender. Second, at the time the offence was committed he was in school.
9. I find that the accused was a minor when he committed this offence. And because of that the sentence of death cannot be imposed upon him. This is clear from the provision of section 25 (2) of the Penal Code (Cap 63) Laws of Kenya, which read as follows:

“(2) Sentence of death shall not be pronounced on or recorded against any person convicted of an offence if it appears to the court that at the time when the offence was committed he was under the age of eighteen years, but in lieu thereof the court shall sentence such person to be detained during the President’s pleasure, and if so sentence such person to be detained during the President’s pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the President may direct, and whilst so detained shall be deemed to be in legal custody. ”

10. By virtue of the foregoing provisions, I hereby sentence the accused to be detained during the President pleasure.
11. Furthermore, I am also required by section 25(3) of the Penal Code to forward the evidence that was taken during trial with my report in writing which should contain any recommendations/observations to the President. The provisions of section 25(3) of Penal Code read as

follows:

“When a person has been sentenced to be detained during the President’s pleasure under subsection (2), the presiding judge shall forward to the President a copy of the notes of evidence taken on the trial, with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make.”

12. In view of the foregoing of provisions of the law, I hereby recommend that the accused be detained for not more than 10 years during which period he should undergo rehabilitative training to prepare him to integrate into the society with useful skills.

13. And by virtue of the foregoing provisions of the law, I hereby direct the Deputy Registrar of this court to forward the following documents to the President.

1. A certified copy of the proceedings.
2. The Judgment of this court in which the accused was convicted.
3. A copy of the instant Judgment on Sentence.

14. In terms of section 25 of the Penal Code, the powers of the President have been delegated to the Minister and to the Permanent Secretary of the Ministry for time being responsible for the Prisons. It therefore follows that the foregoing documents should be forwarded to the Principal Secretary in charge of Ministry of Interior and Coordination of National Government in Kenya

Judgement dated, signed and delivered in open court at Kabarnet this 24^h day of May 2021.

J M BWONWONG’A

JUDGE

In the presence of:

Mr Sitienei, the Court Assistant

Mr Mong’are for the Republic

Mr. Chepkilot for the accused.