



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**CRIMINAL CASE NO. 13 OF 2017**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**DANIEL MUNGAI WAIRIMU alias IGAM.....ACCUSED**

**RULING ON SENTENCE**

1. By the judgment of 23<sup>rd</sup> March, 2021 **DANIEL MUNGAI WAIRIMU alias IGAM (Daniel)** was convicted of the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code.

**FACTS**

2. The deceased, a resident of Karura village, **DENNIS KAMAU MUTHONI** was 30 years old in the year 2016. On the night of 16<sup>th</sup> September, 2016 James Mungai, a resident of Karura village met the deceased who informed him that he had been stabbed by Daniel, whom he referred to as Igam. Deceased exposed his torso to this witness who saw deceased was bleeding from his chest. He saw blood trickling down from the area of injury. Deceased's mother was called and on her arrival the deceased again repeated that Daniel had stabbed him.

3. Daniel, who was also a resident of Karura village, on the matter being reported to the police hid himself for three months and was only arrested when he was seen in that village.

**ANALYSIS**

4. The deceased was 30 years old when he died. He worked as a tout. Daniel through his defence denied killing the deceased and therefore this Court does not know the circumstances that led to the death of the deceased.

5. Daniel however revealed to the probation officer that he committed the offence. This is what is recorded by the probation officer in the presentencing report:-

“Daniel admits to having committed the offence and highly regrets the life lost. He feels sorry to the deceased family and understands well the trauma they have undergone because of his actions. The offender prays for forgiveness from the deceased family and his family too. On that fateful day he says, alcohol influenced his thinking, judgment and acted negatively hence committing the offence. He says that he has never thought or even engaged in any criminal behaviour or activity all his life. Since then, he resolved never to take alcohol or any other substance in his life and stated that he is now spiritually nourished and a changed person.”

6. Although Daniel attributed the alcohol he had consumed for his actions, there was evidence, which he did not deny, to the effect that on the night when the deceased family went to report at the police station that the deceased had passed away while undergoing treatment, Daniel, whom they found at that police station ran away on hearing of that death and went into hiding for three months. It would seem that he was not so drunk to affect his thought line, of escaping arrest.

7. In my consideration of the appropriate sentence for Daniel, I am persuaded by the Canadian case cited in the case of **REPUBLIC VS. GABRIEL MARI GAKUI (2021) eKLR** as follows:-

**“8. It is useful to consider what sentencing of an offender by the court means. This was discussed in the case R V PEARSON**

2002 NBQB 218 (canLII) as follows:

‘...sentencing is the public pronouncement of punishment administered by the authority of the court as trustee of the public’s confidence. It ought to be imposed in a way that applies the rule of law, tempered with justice, administered with the knowledge, good conscience, instincts and experience of the judge and guided where appropriate by persuasive or binding precedent. In my view, the essential purpose of sentencing is to maintain respect for the law by which society chooses to regulate itself, thereby ensuring the peaceful enjoyment, order and safety of its citizens. The community expects the court to enforce its standards, to denounce unlawful conduct and to deal firmly but fairly with those persons convicted of crime. In determining a fit and proper sentencing, well-recognized principles have come to be applied in this jurisdiction. The primary consideration is always protection of the public. In addressing that primary concern, the sentencing judge is obliged to ask whether such protection may best be achieved by specific deterrence of the offender, general deterrence of those similarly disposed, rehabilitation of the offender, or some combination thereof.’”

8. Borrowing the words from the above case, I find that a sentence of 20 years is appropriate to ensure Daniel understands the necessity to maintain respect for the law by which the society chooses to regulate itself, and thereby ensuring the peaceful enjoyment, order and safety of its citizens.

#### **DISPOSITION**

9. In view of the above, I hereby sentence **Daniel Mungai Wairimu alias Igam** to serve 20 years imprisonment for the murder of **Dennis Kamau Muthoni**, deceased. The calculation of that sentence shall take into account the period **Daniel Mungai Wairimu alias Igam** has been in pre-trial incarceration that is from 11<sup>th</sup> December, 2017 to date.

**RULING DATED AND DELIVERED AT KIAMBU THIS 24<sup>TH</sup> DAY OF JUNE, 2021**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant : Ndege

**Daniel Mungai Wairimiu Alias Igam:** Present (Kahawa Court)

For **Daniel Mungai Wairimiu Alias Igam:** Mr. Mathenge

For DPP: Mr. Kasyoka

**COURT**

Ruling delivered virtually.

**MARY KASANGO**

**JUDGE**