

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL CASE NO. 6 OF 2013

REPUBLIC

VERSUS

BENSON THAIRU WANGUI.....1ST ACCUSED

MICHAEL MAINA NJOROGE.....2ND ACCUSED

RULING ON SENTENCE

1. The accused were both found guilty and were convicted of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.

2. The mandatory sentence for murder under the Penal Code is death. The Supreme Court has held that the mandatory nature of the death penalty to be unconstitutional as it deprives an accused person the right to mitigate and also takes away the trial court's jurisdiction to exercise its discretion to determine whether the death penalty is deserved and also to make a determination of the appropriate sentence from the facts and circumstances of the case; refer to **Francis Karioko Muruatetu and Another vs Republic [2017] eKLR**; in line with this authority counsel for the accused persons were therefore invited to mitigate on their behalf.

3. Counsel for the accused urged this court to take into consideration that the accused were first offenders. They were young men with a long life ahead of them and had been in remand since 2013. Whilst in prison, they had time to reflect on their actions and were remorseful and prayed that they be given an opportunity to change their ways. They urged this court to take this into consideration together with the period spent in custody and to temper justice with mercy by considering this period as term served or consider a non-custodial sentence as an appropriate sentence.

4. The State in response submitted that the accused be treated as first offenders. This was a life that was brutally and prematurely terminated due to the unlawful act of the accused. The injuries were intense and the sole purpose was to end the life of the deceased and that the accused persons were not deserving of benefitting of a non-custodial sentence. A non-custodial sentence would not in the circumstances be an appropriate sentence as the accused having been laid off, might have been out to avenge but there were other better ways of handling disputes.

5. Counsel prayed that the accused be given a term of twenty (20) years which she considered would be an appropriate sentence and the period spent in custody be taken into account.

ANALYSIS

6. It is the duty of this court to impose a sentence that meets the facts and circumstances of the case. This court has considered the full circumstances and the gravity of the offence in its judgment dated the 22/10/2020. The deceased was brutally assaulted with stones that crushed his cranium and he succumbed to the injuries sustained.

7. This court has taken into consideration the mitigation on the personal circumstances of the accused where they have expressed their remorse and that are young and that they be given an opportunity to mend their ways and that they were both first offenders.

8. The aggravating circumstances are that the injuries were brutal and the crime committed was heinous. This court concludes that the accused are not deserving of any leniency and a custodial sentence of a term of twenty (20) years is found to be an appropriate sentence. The period spent in remand be reduced from the sentence.

Orders accordingly.

Dated, Signed and Delivered Electronically at Nyeri this 29th day of November, 2021.

HON. A. MSHILA

JUDGE