

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 43 OF 2018

REPUBLIC.....STATE

VERSUS

EZEKIEL KIPYEGON KIPNGOK.....ACCUSED

SENTENCE RULING

1. By a judgment dated 7th August, 2019, The Accused Person (Ezekiel Kipyegon Kipngok) was convicted of the offence of murder. He was found guilty of murdering Jane Samba Lokirion (Deceased) contrary to section 203 as read with section 204 of the Penal Code. It is alleged that the offence was committed on the 22nd day of March, 2014 at Kimoriot village, Mochongoi Division in Marigat District within Baringo County.

2. The Judgment contains details of the murder. In short, the Accused Person, who was a neighbour to the Deceased, landed upon the Deceased on 23/03/2014 – savagely assaulting her with a stick, fists and a big rock – after an apparent disagreement between the two. The motive of the murder was never established. When a neighbour tried to intervene, the Accused Person attacked her too hitting her severally and forcing her to flee. At the end of his murderous attack, the Accused Person stopped by the neighbour’s house to announce at her door: “Nimemaliza and nitajipeleka Police!”

3. The autopsy report by Dr. Joseph Kaniaru Kinyua indicated that the body had numerous bruises and cuts to the face. The right earlobe was lacerated; the left breast was disfigured; and numerous struggle marks on both forearms. The doctor also found a fractured thyroid bone and cricoid cartilage crushed. The trachea and lungs had also collapsed. There were grasp marks around the neck. On examination of the head, the examining doctor found temporo-parietal sub-scalpular haemorrhages bilaterally and massive intra-cranial haemorrhage. In short, the Accused Person used brutal force repeatedly to commit the homicide.

4. Mitigating on his behalf, Mr. Orege pleaded that the Court should consider that the Accused Person is a first offender; that he is the sole bread winner to a wife and seven children; that he is the one who takes care of his aging and ailing parents; and that he was in custody since 23/03/2014. Mr. Orege urged the Court to be lenient in sentencing the Accused Person and pointed to the favourable Pre-Sentence Report filed in the case. That Report, it should be pointed out, was filed at the request of the Defence, not the Court. Finally, Mr. Orege claimed that both the Accused Person and the Deceased were drunk at the time of the attack. However, as Mr. Chigiti submitted, there was no evidence on record that either the Accused Person or the Deceased were drunk.

5. Mr. Chigiti, the Prosecutor, submitted that there were serious aggravating circumstances in the case. First, he pointed to the brutal and vicious way in which the Accused Person attacked the Deceased and continued beating her until he made sure she was dead. He also pointed to the crude weapons the Accused Person used. Mr. Chigiti also told the Court to consider that the Accused Person attacked at least one other person – the neighbour – in the course of his murderous attack.

6. I have considered the mitigating factors as pleaded by Mr. Orege including the fact that the Accused Person is a first offender; is reportedly remorseful; and has reportedly reformed in the period he has been in custody. I have also considered his family situation including the fact that his children and parents might need him as a bread -winner.

7. I have equally taken into consideration the aggravating circumstances highlighted by Mr. Chigiti. They include the sheer brutality of the attack; the fact that the Deceased was defenceless; the fact that the Accused Person injured at least one other person; and the fact that the Accused Person attacked with the singular intent of leaving the Deceased dead and loudly said so after committing the act.

8. Taking all these factors into consideration and having looked at comparable cases, I have come to the conclusion that a substantial custodial sentence is merited as the only suitable way of expressing society’s strong condemnation of the Accused Person’s conduct and deter similar conduct in the future. It is also important that the appropriate sentence matches the barbarity of the Accused Person’s conduct and its effect on the victim’s family and the society.

9. Consequently, in my view, a fit sentence that properly balances the mitigating circumstances with the aggravating circumstances is a sentence of twenty-five (25) years imprisonment and I, accordingly, sentence the Accused Person to that period. The sentence period will be computed to start running from 24/03/2014 when the Accused Person was first arraigned in Court since he has been in custody since then.

10. Orders accordingly.

Dated and delivered at Nakuru this 30th day of January, 2020

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JOEL M. NGUGI

JUDGE