



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL DIVISION**

**HIGH COURT CRIMINAL CASE NO. 5 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**P.C. NO. 70156 NICKSON CHEPKWONY.....ACCUSED**

**SENTENCE**

1. The convict was found guilty of murder of his wife **FELISTER AWINO** on the night of 21<sup>st</sup> December, 2014. What the court is called upon now is to pass out an appropriate sentence thereon under the provisions of Section 204 of the Penal code as read in line with the Supreme Court decision in the case of **FRANCIS MURUATETU & OTHERS v REPUBLIC** **Petition No. 15/16/2017**.

2. In mitigation it was stated by the convict that they had gone out to drink and on their way home a fight ensued which led to the death of the deceased. It was contended that the convict was a father of a son in form three (3) and should be given a chance to play a part in his life. As a police officer he had conducted himself well and should be granted lenient sentence.

3. On behalf of the State it was stated that the convict should be treated as a first offender but should be given a custodial sentence since there were indication of threats towards the victim's family.

4. In compliance with the Sentencing Policy Guidelines and the Supreme Court's advisory in the case of **FRANCIS MURUATETU (supra)**, the court called for pre-sentencing report where it was indicated that the convict regrets the offence which was caused when a fight ensued between them from a drinking spree. The convict had cohabited with the deceased for two and half years though they did not have a child.

5. On the victim impact statement:- it was stated that the deceased dropped out of school in class seven and got married while very young to another man with who she had two children aged five (5) and three (3) years respectively, before separating with him due to domestic violence. The children were in the custody of their father. The family of the victim described the offender as violent and that the deceased was contemplating on separation before her death.

6. The sentencing objectives as per the Judiciary Sentencing Policy Guidelines 4.1 are as follows:-

**1. Retribution: to punish the offender for his/her criminal conduct in a just manner.**

**2. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.**

**3. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law abiding person.**

**4. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.**

**5. Community protection: to protect the community by incapacitating the offender.**

**6. Denunciation: to communicate the community's condemnation of the criminal conduct.**

7. In this matter the accused was married to the deceased who expected safety, security and love from him. This court is alive to the rise in

the number of deaths arising out of domestic violence in the family setting and any sentence meted out by the court should send a warning that the home is a city of refuge and not a place where one has to be on his/her guard. See **REPUBLIC v JOHANA MUNYUA MNENI (2018) eKLR** where the court sentenced the convict to thirty five (35) years.

8. In the case of **GODFREY MUCHANJI OJIAMBO v REPUBLIC (2019) eKLR** Which was also a matter raising out of domestic violence, this court was of the view that the twin objective of deterrence and rehabilitation was appropriate thereby sentenced the convict to twenty (20) years three of which were to be served on probation. In the case of **OMUSE v REPUBLIC (2009) KLR 214** the Court of Appeal held that **“the sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender.”**

9. Whereas the convict has stated that he is remorseful and that the fight arose out of a fight after a drinking spree, he was silent as to what led to the said fight. On the other hand the victim’s family indicated that the deceased was a victim of domestic violence and had contemplated leaving the convict. I have taken into account the evidence of **PW5 JACKLINE AWUOR RADIDO** whose evidence was that the deceased had returned to the city on 21<sup>st</sup> December, 2014 from her rural home and that was the same night she died, together with the evidence of Dr. Johansen Oduor the Chief Pathologist on the cause of death and have come to the conclusion that the convict should be given both deterrence and rehabilitation sentence. I have looked at the two similar cases cited herein and therefore find and hold that a sentence of twenty years would be the most appropriate in the circumstance herein so as to meet the objectives set out herein and to be served as follows:-

a) Seventeen (17) years imprisonment to act as deterrence to other would be offenders.

b) Three (3) years thereafter on probation for rehabilitation and placement of the convict into society.

10. The convict is entitled to appeal both on conviction and sentence while the State is entitled to appeal on sentence and it is so ordered.

**Dated, signed and delivered at Nairobi on 29<sup>th</sup> day of January, 2020.**

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**J. WAKIAGA**

**JUDGE**

**In the presence of:-**

*Mr. Okeyo for the state*

*Mr. Wakaba for the accused*

*Karwitha court clerk*

*Accused present*