

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL CASE NO. 11 OF 2013

REPUBLIC

VERSUS

DANIEL WACHIRA GICHUKIACCUSED

RULING ON SENTENCE

1. The accused was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code and was found guilty and was convicted on the 6/02/2020;
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 is 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 on the appropriate sentence from the facts and circumstances of the case; reference is made to the Supreme Courts' decision in **Francis Karioko Muruatetu and Another vs Republic [2017]eKLR**; guided by this decision counsel for the accused was therefore invited to mitigate on his behalf;
3. Counsel for the accused urged this court to take into consideration that the accused and the deceased were friends; also urged this court to consider the facts and circumstances of the case in that the accused and the deceased were from a drinking spree when the offence was committed; he was arrested at home and had not run away; the accused has a wife and two (2) young children who are wholly dependent on him as he is the sole bread winner; the accused was a first offender.
4. The State in response submitted and confirmed that the accused was a first offender; the deceased and accused were close friends; the accused had gone about his business without caring as to what had happened to his friend; that there was a life lost prematurely due to the unlawful act of the accused; the family had been robbed of a provider, relative and friend which situation was irreversible;
5. Counsel prayed that the accused be given the maximum sentence.

ANALYSIS& DETERMINATION

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 6/02/2020;
7. This court has taken into consideration the mitigation on the personal circumstances of the accused and that he is a first offender and is also remorseful; the court has also considered the fact that the accused and the deceased were friends and both had gone on a drinking spree and that being under the influence of alcohol this may have unduly inflamed his anger towards the deceased;
8. The aggravating circumstances are the accused conduct in not bothering at all in making any attempt to visit the deceased's home to check on the condition of his so called friend;
9. This court nevertheless concludes that the accused is deserving of leniency due to his condition at the time of the commission of the unlawful act and a custodial sentence of a term of fifteen (15) years is found to be an appropriate sentence; having taken into consideration the long period of time spent in remand the sentence shall run with effect from 17/05/2013;

Orders accordingly.

Dated, Signed and Delivered at Nyeri this 27th day of February, 2020.

HON.A.MSHILA

JUDGE