



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

HIGH COURT CRIMINAL CASE (MURDER) NO 36 OF 2018

(Coram: OUGO J.)

REPUBLICPROSECUTION

VERSUS

JONES WAMABURA KIRATU

ALIAS MWITA.....1ST ACCUSED

TAGANE MWITA SANDWE

ALIAS MTANZANIA.....2ND ACCUSED

STEPHEN MAHIGARA KIRATU

ALIAS MAHINGA WMABURA KIRATU3RD ACCUSED

SENTENCING

1. Jones W. Kiratu, the 1st accused, Tagane S. Mwita, the 2nd accused and Stephen M. Kiratu, the 3rd accused person have been convicted of murdering 2 persons vide a judgment dated the 20th May 2020.

2. The penalty for the offence of murder is the death sentence. I am alive to the fact the pursuant to the decision of the Supreme Court in the case of *Francis Karioko Muruatetu & Another vs R (2017) eKLR* the Supreme Court found that the mandatory death penalty was unconstitutional.

3. The defence counsel has submitted that the accused persons are first offenders they are remorseful and have young families. That they seek leniency request that the accused persons be give a non-custodial sentence. That they have health problems.

4. The prosecution indicated that they are first offenders and that they had no records of a previous conviction.

5. The probation reports were tendered. The 1st accused Jones is said to be 32 years old. He is married and has 3 children. The report indicates that he has no report of criminality and that he is good person. That he is the sole breadwinner of his family. That the family is willing to have him back in the community. The report recommends a probation sentence. The 2nd accused’s report indicates that he is 35 years old. That he is married and has 5 children. The recommendation on the 2nd accused is similar to that of the 1st accused. The 3rd accused is 46 years old. He is married to 2 wives and has 11 children. The report recommendation is that he be given a non-custodial sentence. I note that the officer who wrote the reports did not note that 2 persons lost their lives and that the accused persons were convicted of two counts of murder. The reports are quite similar in context and only mention the name of one deceased.

6. According to The *Sentencing Policy Guidelines, 2016* (“the Guidelines”) published by the Kenya Judiciary, the sentence imposed must meet the following objectives in totality;

(a) Retribution: To punish the offender for his/her criminal conduct in a just manner.

(b) Deterrence: To deter the offender from committing a similar offence subsequently as well as discourage other people from committing similar offences.

(c) Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.

(d) Restorative justice: To address the needs arising from criminal conduct such as loss and damages.

(e) Community protection: To protect the community by incapacitating the offender.

(f) Denunciation: To communicate the community's condemnation of the criminal conduct.

7. I have considered all the above and that the fact the accused persons/ convicts were convicted of murder of 2 persons. The facts as narrated in court were that the accused person were armed with pangas and sword when the injuries were inflicted on the deceased persons. They had a common intention to finish the 2 persons.

8. Although a non-custodial sentence is recommended however in my view justice demands that a custodial sentence is appropriate. I have noted that the 2nd accused has been in custody from October 2018. In **John Ndede Ochodho alias Obago v Republic KSM CA Criminal Appeal No. 120 of 2014 (2018) eKLR**, the Court of Appeal upheld a sentence of 30 years in a case of murder where the appellant assaulted the deceased several times causing his death. Considering all this I sentence each accused person to 30 years in jail for each count. The sentence shall run concurrently.

Dated signed and delivered at KISII this 30th day of June 2020.

R.E. OUGO

JUDGE

In the presence of:

Mr. Nyangwencha	For the Accused Persons
1st Accused Person	Present
2nd Accused Person	Present
3rd Accused Person	Present
Mr. Otieno	Senior Prosecution Counsel Office of the DPP
Rael	Court Assistant