



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO 35 OF 2016

REPUBLIC.....RESPONDENT

VERSUS

BERNARD JOHN OKUKU OUMA *alias* GEORGE OUMAACCUSED

RULING ON SENTENCE

1. The accused was on 21/5/2020 found guilty and convicted of the offence of murder contrary to Section 203 of the Penal Code. The court is now called upon to pass an appropriate sentence thereon taking into account the Supreme Court's decision in **FRANCIS KAROKO MURUATETU & ANOTHER VS REPUBLIC [2017] eKLR** wherein the court declared unconstitutional the mandatory nature of the death sentence.
2. In compliance with the Supreme Court's decision, the court called upon the convict to make his mitigation. In mitigation Mrs. Kinyori stated that the same was aged 28 years and single. He was a first born in his family whose father died while he was still young leaving him under the care of his mother who has been adversely affected by the accused being in remand.
3. She stated that the accused was truly remorseful for what had happened and while in prison had taken time to look at his life and had undertaken several courses offered at Prison including being in charge of the prison fellowship.
4. It was contended that the accused was greatly in love with the deceased and could not understand why he did what led to her death and therefore sought mercy from the court. Mrs. Kinyori stated that the accused was extensively burned and was emotionally affected by his action, making him unable to explain what had happened. She therefore sought for non-custodial sentence on behalf of the convict, to enable him go out there and teach the youth of what not to do while he continues to serve the church as well as being a useful member of society.
5. It was submitted that the same had been in custody for five (5) years which should be taken into account. It was contended that whereas there were a lot of cases involving killing out of jilted love, in this case, the accused wanted to die with his lover having been emotionally affected.
6. On behalf of the State, Ms Gikonyo submitted that the offence was premeditated with the accused pretending that he had gone to discuss church matters with the deceased but armed with a bottle of petrol on a revenge mission since the deceased had left him. It was contended that the deceased was aged 25 years who still had a long life ahead of her and great expectations from her family who were still in mourning.
7. It was contended that there was a need to send a message to jilted lovers among the youth to understand that in relationships, some can stay and some can end. It was further stated that there was a need to send a strong message against gender based violence by passing a death sentence against the convict.

DETERMINATION

8. The objectives of sentencing upon conviction is to meet either of the following:-

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.

9. In this matter, the undisputed facts are that the accused and the deceased were in romantic relationship for some time before she left him for PW3 who ultimately married her, which did not go down well with him. From the evidence on record he kept on trying his luck to get back her love but to no avail, leading the deceased to complain to her husband and her brothers. There was also an unconfirmed allegation that she reported to the church leadership all which seemed not to have provided her with a relief.

10. As submitted by Ms Gikonyo, the accused in a revenge mission decided that it was either him with the deceased or both of them had to die. Mrs. Kinyori on the other hand stated that the accused was too much in love with the deceased that he was emotionally affected by her leaving him and therefore was not in control of his motions at the time of the evidence.

11. In the case of **REPUBLIC Vs PETER MUKUHA MBAI CRIMINAL CASE NO. 8 OF 2017** reported in [2020] eKLR Report this court had this to say on sentence:-

“9. From the judicial decisions, the following factors must be taken into consideration as sentencing principles:- The sentence must be no more severe than is necessary to meet the purposes of sentencing. The overall punishment must be proportionate to the gravity of the offending behavior, similar offences committed by offenders in similar circumstances must attract similar sentence and the overall sentence must be just and appropriate in light of the overall offending behavior.

10. While weighing on the nature of gravity of the offence, the court must take into account the intension of the offender, the consequences of the offence, the nature of the weapon used and the offender's history of the offending.”

And in the case of **REPUBLIC v CORNELIUS THUKU MBULIKA case No. 3 of 2018** reported in [2020]eKLR the court states further:-

“10) Convention on Preventing and Combating Violence Against Women and Domestic Violence:- defines domestic violence as ‘all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit between former or current spouse or partners whether or not the perpetrator shares or has shared the same residence with the victim. Article 3.b.

11. The sentence meted out to the convict must therefore be commensurate with the gravity of the crime committed worth the purpose of the punishment being:-

a. Exerting a preventive influence on individual not to commit criminal offences

b. Preventing the perpetrators from committing additional offences and encouraging his/her rehabilitation and expressing the community's condemnation of the criminal offence and reaffirming the value of the law.

12. This court has said and shall continue to say “that all married persons but women in particular have a right to choose their own destiny and until this message is spread and applied consistently at all levels of the justice system, more women will continue to die in the confines of their homes, where they expect love and comfort and the perpetrators will continue to thumb their nose at the law by evading appropriate sentence and the right to equal treatment guaranteed in our constitution will be but a mirage.”

12. Justice Lesiit in the case of **REPUBLIC Vs RUTH WANJIKU KAMANDE Criminal Case No. 93 of 2015** reported in [2018] eKLR had this to say:-

“30. I want young people to know that it is not cool to kill your boy in girl friend. Even where you feel disappointed or frustrated don't do it. Instead it is cool to walk away and thereafter forgive.”

I cannot say it better than this.

13. In this matter, I have taken into account the fact that the accused was so emotionally attached to the deceased, that he decided that both of them had to either live together or die together. He was in a suicide bomber kind of a mission and was only lucky to have survived. He was extensively burned and those marks will be a constant reminder of the deceased during his lifetime. He has been in custody for five years and has undergone some form of rehabilitation. He is a young man at the prime of his life, the court did not get to know whether the deceased was his first lover so as to fall with the context of the Africa proverb “If you don't travel you will marry your own sister” or “he who has not travelled think that his mother is the only good cook.”

14. I have taken into account the lost love on the part of the accused and his emotions thereafter and the need to send a warning to the youth in particular of the need to control their emotions while in love and the fact that the accused has been in custody for five years and without

the benefit of pre-sentencing report come to the conclusion that a deterrence and rehabilitative sentence will be the most appropriate sentence herein.

15. Having taken into account the age of the accused, the circumstance under which the offence was committed, I have come to the conclusion that a sentence of fifteen (15) years will be the most appropriate sentence with effect from 16/5/2016 taking into account Section 333 of the Criminal Procedure Code of which the last three (3) thereof shall be served on probation for further rehabilitation of the accused and proper placement in society and it is ordered.

16. The accused has a right of appeal both on conviction and sentence which the State retains right of appeal on sentence.

Dated, signed and delivered at Nairobi this 25th day of June, 2020 through Microsoft Google Teams.

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J. WAKIAGA

JUDGE

In the presence of

Ms. Gikonyo for the State

Mrs. Kinyori for the accused

Karwitha/Court Assistant

Accused person present