



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

Coram: D. K. Kemei - J

CRIMINAL (MURDER) CASE NO. 1 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

PATRICK MUTUKU WAMBUA ...ACCUSED

SENTENCE

1. **PATRICK MUTUKU WAMBUA** was found guilty of the offence of murder and convicted accordingly vide the judgement of this court dated 30.1.2020.

2. In terms of section 203 as read with section 204 of the Penal Code the accused is automatically subject to the mandatory death sentence. However, I am alive to the fact that pursuant to the decision of the Supreme Court in **Francis Karioko Muruatetu & Anor v R (2017) eKLR**, which found that the mandatory death penalty regime was unconstitutional meaning that this court would have to align itself with the findings in the said case and proceed to receive mitigating circumstance of the accused as well as the pre-sentence report.

3. The prosecution is represented by Mr. Mwongera, whereas the accused is represented by Miss Gichuki. Both Counsels for the parties ably presented their oral submissions on mitigation and sentencing on 17.9.2020. On record is also a probation officers report dated 21.7.2020.

4. Miss Gichuki submitted that the accused was a remorseful first offender. It was submitted that he had been under the influence of alcohol and that the guilt of the death of the deceased will live with the accused forever. It was submitted that the accused had been in remand for about six years and had been of good conduct; the court ought to consider giving him a non-custodial sentence. It was submitted that the accused sought to be allowed an opportunity to reconcile with the family of the deceased.

5. Counsel Mwongera submitted that the court ought to consider that a life was lost and that the deceased had a family with two children as well as a mother. It was reiterated that the accused and the deceased were intoxicated and that the accused is a first offender who has been in custody since 2015.

6. A perusal of the probation officers report indicated that the accused is a 46-year-old who attended school up to class three but did not proceed further due to separation of his parents. It was reported that the convict used to depend on domestic employment where he earned KShs 4,500/- and that he used to spend his leisure time by taking alcohol and chewing miraa (khat). It was reported that the victim's family is willing to be compensated and if not they will perform their 'Kithitu' that is a Kamba curse. It was reported that no reconciliation and compensation has taken place as all the efforts that were made were nullified. It was pointed that the convict required intervention for anger management and conflict resolution skills.

7. In sentencing the convict the following factors/reasons are considered:-

a. The case of *Francis Karioko Muruatetu & Anor v R (2017) eKLR*.

b. All the mitigating factors submitted by both counsel for the prosecution and the accused. Both counsels presented convincing arguments which have ably guided me to pass an appropriate sentence against the accused.

c. The Judiciary Sentencing Policy Guidelines, particularly paragraph 23.7.

8. For special emphasis, I have also considered the following factors:-

a. The convict has already been convicted of murder.

b. From the facts of the case and the way the deceased was killed, the accused person was said to have pushed the deceased outside and then tied him up with a rope on a tree within his compound.

c. There are no established previous records of the convict.

d. The attempts at reconciliation have failed.

e. The convict is stated to require anger management and conflict management skills.

f. The convict has been in remand since 2015 before conviction which period I have taken into account in passing a sentence against him.

9. In the result and for the reasons given hereinabove in this ruling, the convict deserved the death sentence. However, owing to the legal authorities cited hereinabove, this court has a wide discretion in determining a sentence to pass against each convict.

10. Accordingly, therefore, I make a finding that the convict in this case deserves an appropriate sentence of imprisonment. In **Jonathan Lemiso Ole Keni v Republic (2018) eKLR** where the appellant shot a person without any provocation, the court imposed a sentence of 30 years' imprisonment. In **John Ndede Ochodho alias Obago v Republic (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. Thus, taking into account the time that the convict spent in remand before conviction, I would have sentenced the convict to 30 (thirty) years imprisonment, but I must factor the said period the convict spent in remand before conviction which is running to about six years.

11. The upshot of the foregoing is that I sentence the accused to Twenty Four (24) years imprisonment from the date of conviction namely 30.01.2020.

It is so ordered.

Dated and delivered at Machakos this 29th day of October, 2020.

D. K. Kemei

Judge