



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL CASE NO. 22 OF 2017[MURDER]

STATE.....PROSECUTION

VERSUS

PASCAL OCHIENG OYOKO.....ACCUSED

RULING ON SENTENCE

1. On 19/10/2020, this court delivered judgment in this matter finding the accused person herein Pascal Ochieng Oyoko guilty of the offence of Murder contrary to Section 203 of the Penal Code and convicted him accordingly.
2. The accused and his advocate mitigated after the Prosecution counsel indicated to court that the accused was a first offender. This court then ordered for a Presentence Report to be filed by the Probation Officer, Siaya, and a Victim Impact Statement which was only filed on the morning of 16/11/2020.
3. In the Victim Impact and Presentence Report dated 11/11/2020 filed by Ms. Euphemia Kidwoli Probation Officer, Bondo, the accused claims that he committed the offence because of anger as the victim Linda was his girlfriend and that he had found her talking to another boy on the material day and on questioning her, she was not sorry so he could not stand a rival. That he had a panga where got possessed of some power and he cut the victim on the neck.
4. The victim was a form three student at Ochienga Secondary School and had reportedly been in a relationship with the offender/convict for three years. The accused convict used to visit the victim and her parents knew him very well.
5. The death of the victim has had psychological and emotional harm to her parents especially the victim's father. The parents wish that he offender is imprisoned so that he pays for his action.
6. The offender is also said to be disturbed at what he did. He does not know how to apologize to the victim's family. There is no willingness for any form of reconciliation between the two families as the victim's family are still mourning her death and are undergoing psychological and emotional pain. The two families live in neighboring villages.
7. The offender has no family of his own - he was unmarried. Any community order or non-custodial sentence is not welcome. The victim's family have been linked to Amani Counselling Centre for help. The victim was aged 23 years old while the offender is aged 22 years old.
8. I have considered all the mitigation by the offender and that of his counsel Mr. Odongo stating that the offender is extremely remorseful and prays for leniency. I have also considered the age of the offender, the Social Inquiry Report – Victim Impact Statement filed as well as the Presentence Report and the circumstances under which the offence was committed. The victim was a young promising school girl. The offender was having an illicit affair with a school girl and was incensed by her allegedly talking to another boy and he assumed that the boy was his rival. The offender was not married to the victim and therefore I find no ties or reasons why he armed himself with a panga and aimed at her neck with the sole intention of eliminating her yet he found her in her mother's house on the material night. The victim was not attacked when she was in the company of the alleged rival on the material night The so-called 'power' that engulfed the offender to cut the deceased in the neck, ending her life is indeed evidence of a devious person who wants to hide under some mysterious 'power' to maim and kill innocence lives.
9. The offender deserves deterrent custodial sentence. He needs to be rehabilitated and to reform before he can get back into the community which is so bitter with him for taking away the young life that was in Linda, a Form Three student with a bright future and hope of her parents who still suffer psychological and emotional pain.
10. For all the above reasons, I find it necessary to impose custodial sentence to the offender. Punishment for Murder, as stipulated under section 204 of the Penal Code is death. However, this is not mandatory sentence as was stated in the **Francis Karioko Muruatetu & another Vs Republic [2017] eKLR** case.

11. Accordingly, I sentence the convict Pascal Ochieng Oyoko to serve thirty five (35) years imprisonment to be calculated from the date of his arrest (surrender to the police).

12. The convict shall not be eligible for remission of sentence as the sentence imposed is lenient and far much below the maximum for such a heinous offence.

13. Orders according. This file is now closed.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 30TH DAY OF NOVEMBER, 2020

R.E. ABURILI

JUDGE

In the Presence of:

Accused person

Counsel Mr. Odongo

Mr. Okachi, Senior Principal Prosecution Counsel

Court Assistant: Brenda