



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

HIGH COURT CRIMINAL CASE (MURDER) No 1 OF 2015

BETWEEN:

THE REPUBLIC

and

JOSEPH MULELE MUTISO

JUDGMENT ON SENTENCE

1. Joseph Mulele Mutiso is brought before the Court today to be sentenced. He was convicted by the Judgment of Hon J. Kamau J. dated 25th May 2018 and delivered on 30th May 2018. He was convicted of two charges of Murder. His victims were his Uncle Daniel Mwasia Mutinda and Daniel's Wife Esther Mulwa. His victim in the first Count was his Uncle.
2. The circumstances of the dispute between the protagonists is all too real in a community small scale land holding and boundary disputes. The dispute seems to have arisen over a boundary and was finally resolved by the elders to the satisfaction of the deceased and his brother. The particulars of the crime are such that the prosecution calls it a heinous crime. The prosecution is asking the Court for the death penalty. The Defence is asking the Court to be lenient but does not make any submissions on how that leniency should be effected and what will be the effect on the community. The Probation Officer having considered the views of the community has recommended a custodial sentence. In the circumstances, it seems that some kind of custodial sentence is inevitable.
3. The crime committed is indeed awful. The injuries suffered by the victims were terrible. The post mortem for Daniel Mutinda show that he was repeatedly hacked with a sharp implement. Such force was used that it broke bones namely fracturing the cerebral vertebra and severing the spinal cord. That means that he was paralysed leading to multiple organ failure. It also means he was stabbed or slashed in the back when he was trying to escape. He must have died slowly as a consequence. There must have been an element of bleeding because the post mortem shows that it was not possible to collect any fresh blood samples as all the blood had clotted.
4. The post-mortem for Esther Mulwa also shows that she was stabbed repeatedly. It is clear from the cuts to the hands and arms that she probably trying to defend herself to no avail. The post mortem states that there were cut wounds on "the body" severing the carotid artery and the jugular vein. That suggests she sadly had her throat slit. She bled to death as a consequence. Again her death would probably have been slow. It is on that basis that the Prosecution is asking for the death penalty. However, the Court has a discretion.
5. In mitigation it is said that the Accused, now convicted, is a young man. He is only 27 years old and has never been married and have children. There is no explanation as to why he is filled with so much hatred and violence. He belongs to a squatter community with a subsistence living. There is no record of alcohol or substance abuse (assuming that all the relevant inquiries were conducted by the Probation Service).
6. The Community is not ready to receive the Accused back into their midst. He has in fact committed patricide by killing his Uncle - his Father's brother. No doubt there is great concern about his potential for re-offending in particular as he has a history of assault. In this case that has escalated.
7. In the those circumstances, this Court has a duty to protect the Community from the possibility not only of re-offending but also of escalation and aggravation as already demonstrated. Therefore a custodial sentence is inevitable. Is the death penalty also therefore inevitable?
8. In light of the youth of the Accused and the fact of his difficult upbringing, there is still hope that in the right circumstances, he may be able to rehabilitate over time. That rehabilitation can only be provided in a controlled environment.

9. For those reasons, the Accused is sentenced to life imprisonment. It is hoped that whilst in prison he will receive the necessary counselling and psychological intervention so that some day it may be safe for him to return to the community.

It is so Ordered,

FARAH S. M. AMIN

JUDGE

Delivered, Dated and Signed at Voi this the 22nd day of January 2019

In the Presence of:

Court Clerk: Josephat Mavu

Appellant : Mr Muthami

Respondent: Ms Anyumba