

REPUBLIC OF KENYA

IN THE HIGH COURT

AT KERICHO

HCCR NO. 13 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

AUGUSTINE KIPKEMOI BOSUBEN.....ACCUSED

RULING ON SENTENCE

1. In the judgment of this court dated 22nd November 2018, this court found the accused guilty of the offence of murder contrary to section 203 as read with section 204 of the Penal Code. It was my finding that he had, on the 23rd day of March 2014 at Kalyonguet Location within Kericho County, with malice aforethought, murdered Vincent Kipchumba Korir. The state indicated that the accused was a first offender.

2. In mitigation on behalf of the accused, Mr. Sang, holding brief for Mr. Motanya who was on record for the accused, stated that the accused, a father of two young children, was remorseful for the offence committed and for the loss of the deceased. That the deceased was the aggressor who tried to waylay him and attacked him while they were both drunk. He has been in custody for the last five years and his family and that of the deceased had reconciled. He was praying for a non-custodial sentence.

3. In a social inquiry report filed in respect of the accused, the Probation Officer, Kericho, notes that the accused is a father of two children and a widower, his wife having passed away in 2015. He is remorseful and has learnt a lesson from the time he has spent in custody. The family of the accused and the deceased have started a process of reconciliation. It is noted that this was an isolated incident and the accused did not have a prior criminal record. He did, however, indulge in alcohol which led to his commission of the offence.

4. I have noted the mitigation of the accused and the sentiments of the accused and deceased's family. I note that he is a first offender, and prior to this incident, he was a well-behaved person. I note further that his family and the family of the deceased have reconciled and, according to the Probation Officer, are awaiting the release of the accused so that they can perform the traditional cleansing rites.

5. However, I bear in mind that the accused is before this court because he caused the death of another person. He deliberately took his knife and stabbed the deceased in the neck so violently that he severed the major blood vessels in the neck of the deceased, the carotid and jugular vein. He did not intend that the deceased should live.

6. The penalty provided for the offence of murder is death. However, in its decision in **Francis Karioko Muruatetu & Others vs Republic Supreme Court Petition No. 15 of 2015**, the Supreme Court set certain guidelines for determining whether a court should pass the death penalty where, as in cases of murder such as this, that is the penalty provided by law. These guidelines include the age of the offender, whether or not he or she is a first offender, the character and record of the offender and whether the offender is remorseful.

7. The accused in this case is a first offender. He and the deceased were drinking when the offence occurred, and it appears that it occurred as a result of a quarrel over the deceased's failure or refusal to buy the accused a drink.

8. While I was not satisfied that the accused was so intoxicated that he did not know what he was doing, I consider that the circumstances of the case are not so heinous, from the nature of the premeditation and the manner in which the offence was committed, to warrant the death penalty. I further note that the accused is a widower with two children, and that, so the Probation Officer's report indicates, his parents and siblings are all deceased. He does, however, need to spend time in prison, to appreciate the enormity of his actions, and to pay his debt to society for his actions.

9. The accused has been in custody for the last five years. Taking into account this period, I hereby sentence him to 20 years imprisonment. He has a right of appeal in 14 days.

Dated, Delivered and Signed at Kericho this 27th day of February 2019

MUMBI NGUGI

JUDGE