



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**HIGH COURT CRIMINAL CASE NO. 28 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**CHARLES LANGAT *alias* ZACHARIA.....ACCUSED**

**RULING ON SENTENCE**

1. In the judgment delivered on 18<sup>th</sup> December 2018, this court found the accused, Charles Langat *alias* Zacharia guilty of the offence of murder contrary to section 203 as read with section 204 of the Penal Code. It was the finding of the court that he had, on the 13<sup>th</sup> day of December 2015 in [particulars withheld] Village in Sorget sub-location in Londiani sub-county within Kericho County, with malice aforethought, he murdered L C.

2. The state indicated that it did not have any previous records on the accused, and that the accused may be treated as a first offender. However, Learned Prosecution Counsel, Ms. Keli, prayed that owing to the circumstances of the case, the court should exercise discretion and pass the most severe sentence that the court can pass. She observed that the accused had taken advantage of the deceased, a young girl, and had defiled and then killed her while she was at her aunt's house.

3. In mitigation on behalf of the accused, Mr. Langat stated that the accused, a young man of 20 years, was remorseful about the events of the material day. He was praying for leniency and for a non-custodial sentence from the court so that he could have a chance for rehabilitation.

4. In a social inquiry report prepared by the Probation Office in Kericho, it is noted that the accused still denied committing the offence and was not remorseful. The report indicates that the local administration in his home area and the area where the offence was committed stated that he was in the habit of consuming alcohol and bhang, and had on a previous occasion allegedly threatened to kill a girl who had resisted his advances. The report does not portray a person who is remorseful for his conduct, or one who is deserving of the leniency of the court.

5. I have before me a young man who has committed a most heinous crime. He attacked and defiled an innocent young girl, had then stabbed her to death so viciously that the murder weapon, a kitchen knife, was bent in the process. He had then carried her from the kitchen and left her in a sheep's pen, her blood mingling with the sheep's droppings. He had no regard for her life, or her dignity. Having assaulted her sexually then stabbed her to death, he showed no respect for her dignity in death, and left her in a sheep's pen.

6. Counsel for the accused urged the court to give him a lenient sentence and a chance for rehabilitation. I note that the accused is a young man-his age, according to the age assessment report dated 17<sup>th</sup> December 2015, was 22 years at the time of commission of the offence, which would make him 25 years now.

7. The sentence mandated by law for the offence of murder under section 204 of the Penal Code is the death penalty. However, the court has discretion to pass a lesser sentence as was held by the Supreme Court in **Francis Karioko Muruatetu vs R Supreme Court Petition Nos. 15 and 16 of 2015**. In exercising this discretion, the court should consider, among other things, whether the accused is a first offender, his age, the character and record of the offender, whether he is remorseful, and the possibility of reform and social re-adaptation of the offender. The Supreme Court also mandated courts to also consider whether the offence was committed "*...in response to gender-based violence.*"

8. In this case, not only did the accused commit murder, but he did so in the course of perpetrating a sexual gender- based offence, the offence of defilement of a child. Should the legislature in Kenya get round to enacting legislation on the special or aggravating circumstances that should invite the death penalty, I believe the commission of murder while engaged in the commission of a sexual offence should rank high in the list.

9. In the circumstances, I find that the accused in this case deserves the death penalty. I therefore sentence him to death, the penalty prescribed for the offence of murder under section 204 of the Penal Code.

10. He has a right of appeal within 14 days.

**Dated delivered and signed at Kericho this 21<sup>st</sup> day of February 2019**

**MUMBI NGUGI**

**JUDGE**