

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL CASE NO. 35 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

DENNIS KIPKURUI BETT.....ACCUSED

RULING ON SENTENCE

1. In the judgment of this court delivered on 30th October 2018, I found the accused, Dennis Kipkurui Bett, guilty of the offence of murder contrary to section 203 as read with section 204 of the Penal Code. It was my finding that the accused had, on the 31st day of October 2016 at Manyoror village, Kericho County, with malice aforethought, murdered Victor Kiplangat Tanui. The state indicated that the accused could be treated as a first offender.

2. In mitigation on behalf of the accused, Learned Counsel, Mr. Mwitwa, submitted that the accused is a 23 year old man, a first offender and in his resourceful years of age. He was the second born in a family of six, and prior to his incarceration, he was a *boda boda* rider who used to assist his family with the proceeds from his business. He had spent more than two years in custody, and was praying for a lenient sentence, if possible a non-custodial sentence.

3. I directed the Probation Office, Kericho to carry out a social inquiry and file a report on the accused prior to sentencing.

4. In the report filed in court on 4th February 2019, the Probation Officer, Kericho, notes that the accused is a repeat offender. That he is said to have served a jail term for housebreaking and stealing at Kapsaos Centre. This information, however, is not backed by any documentation, and the prosecution indicated that he may be treated as a first offender. He pleads for leniency, though the report indicates that he stated that the court should see what to do with him since he was found guilty. The Probation Officer notes that the accused pleads for leniency, but adds that he sounds barely remorseful. The local administration through the Assistant Chief refers to him as a problematic person who is a repeat offender.

5. I have considered the accused's statement in mitigation and the social inquiry report. Though the accused pleaded for leniency through his Learned Counsel, the social inquiry report does not paint a very positive or optimistic picture of the accused. Though a young man of 23, he appears to have developed tendencies that had put him in conflict with the law even before the events that resulted in his conviction for murder.

6. The accused killed another young man, in cold blood. The social inquiry report suggests he did so because of rivalry over a woman. This did not emerge from the evidence. However, whatever the motivation for his actions, he deliberately and with malice aforethought took away the life of another human being who, from the evidence, was not in any way a threat to him.

7. 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.

8. The accused in this case is a young man, but the assessment of his character is not very promising. He deliberately set out to end the life of another person, and for the most mundane of reasons, jealousy over a woman. While this court will spare him the ultimate penalty in the hope that he will reflect and make something of his life, I believe he merits a severe custodial sentence.

9. I therefore hereby sentence him to life imprisonment.

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

Dated delivered and signed at Kericho this 21st day of February 2019

MUMBI NGUGI

JUDGE