



REPUBLIC OF KENYA

HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 121 OF 2013

REPUBLIC.....STATE

VERSUS

STEPHEN KOIGI SAWE.....ACCUSED

RULING ON SENTENCE

1. On Christmas day in 2013, at around 10:00pm, the Accused Person forcefully barged into the house of Abraham Njenga Ndung'u (Deceased) at the Kamwingi One Trading Centre in Londiani District within Kericho County. He was armed with a knife. The Deceased and his lover, Beatrice Waithera, were inside the house. They were in bed.

2. The Accused Person attacked the Deceased, who had jumped out of bed to go towards the door, first. He immediately stabbed the Deceased on the left side of the sternum puncturing his heart and lung. The Deceased groaned in pain and collapsed in a heap. He breathed his last.

3. Sensing danger, Beatrice Waithera, who was the Accused Person's estranged wife, attempted to flee the room. In the midst of shouting "Nitawaua nyinyi wote wawili!", the Accused Person attacked his ex-wife. He stabbed her four times. Fortunately for her, she managed to escape and ran out of the house. She collapsed on the ground a few metres from the ground.

4. These are the material facts culled from the Judgment of the Court in this case. In that Judgment dated 30/05/2018, the Learned Justice Maureen Odera convicted the Accused Person of murder contrary to Section 203 as read with Section 204 of the Penal Code. Justice Odera was transferred out of the station. It fell to me to conduct the sentencing hearing.

5. At the sentencing hearing, two relatives of the Deceased addressed the Court. Samuel Njenga Ndung'u is the father of the Deceased. Mary Njeri Kimani is the aunt. They both urged me to consider sentencing the Accused Person to life imprisonment. They told the Court that the Deceased was an ambitious young man who was full of life and vision. He was an officer in the General Service Unit. They lamented that he lost his life even before he had an opportunity to marry and bear children. The only justice for him, they felt, was to imprison the Accused Person for life.

6. Mr. Chigiti, the Prosecutor, was of similar view. He told the Court that the Court should consider that the family of the Deceased is yet to come to terms with the loss of the Deceased in these brutal circumstances. He submitted that the actions of the Accused Person were uncalled for; that he had a chance to cool down but chose not to. Further, he urged the Court to consider that the Accused Person seriously injured his former wife in what was an attempt at her life. Lastly, Mr. Chigiti pointed out that the Accused Person was determined to kill: he aimed the knife at the chest.

7. Ms. Moenga submitted on behalf of the Accused Person. She submitted that the Court should consider that the Accused Person is a first offender; that he is the sole bread winner to his four children; that he acted in anger; and that he was in custody for two years before he could afford bond. Ms. Moenga urged the Court to be lenient in sentencing the Accused Person.

8. On his part, the Accused Person told the Court that he had tried his best to avoid the outcome but that he had reacted with anger. He stated that he responded as he did because he was provoked and he did not know what plans the Deceased had with his ex-wife. He submitted that this was not a planned killing and that he was remorseful.

9. I have now considered the circumstances in which the offence was committed and the mitigating and aggravating factors. I have taken note that the Accused Person is a first offender; and that he has expressed remorse. His alleged status as the sole bread winner to his family is demonstrably false: the four children he bore with his ex-wife (whom he mercilessly stabbed) live with the ex-wife, who is a member of the disciplined forces.

10. There are many factors which are aggravating in this case and which, seen together, call for a long prison sentence as the only proportionate response to the brutality of the crime:

a. The crime was clearly planned. The attack did not occur spontaneously on the spur of the moment. Instead, what emerged from the trial is that the Accused Person planned the attack and lay in wait for them. He attacked them at the Deceased's own house just after they had retired to bed. There is no doubt that he had planned to kill. As the Accused Person stabbed the ex-wife, he repeatedly shouted that on that day he would kill both her and the Deceased.

b. The circumstances show that the Accused Person had planned to kill both the Deceased and his ex-wife – and that only sheer determination and a little bit of luck saved his ex-wife.

c. Nonetheless, the ex-wife suffered serious, life-threatening stab injuries at the hands of the Accused Person. The Accused Person stabbed her four times before fleeing.

d. The attack happened in the Deceased's own home.

e. The Accused Person tried to conceal his crime by throwing the murder weapon into the river.

11. After considering all these factors, and after taking into account the two years the Accused Person was in custody during the pendency of the suit, I hereby sentence the Accused Person to imprisonment for thirty (30) years. This, in my view, is the fitting sentence which serves the deterrence, signaling and rehabilitative functions of sentencing in the circumstances of this case.

12. Orders accordingly.

Delivered at Nakuru this 28th day of March, 2019

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JOEL NGUGI

JUDGE