



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CRIMINAL CASE (MURDER) NO. 46 OF 2012

REPUBLIC.....PROSECUTOR

-VERSUS-

JOSEPH KIBET KIRUI.....ACCUSED

SENTENCE

1. **Joseph Kibet Kirui** was on the 20th December 2018 convicted for the offence of Murder of his wife Jane Chepkemoi Kirui on the 14th June 2012 contrary to Section 203 as read with Section 204 of the Penal Code. Section 204 thereof provides that any person convicted of murder shall be sentenced to the mandatory death sentence.

2. This position was however reversed by the Supreme Court decision in the case **Francis Karioko Muratetu & Another -vs- Republic Petitions No.15 and 16 (consolidated) of 2015 (2017) e KLR** when the court had this to say of Section 204

“(69) consequently we find that Section 204 of the Penal Code is inconsistent with the constitution and invalid to the extent that it provides for the mandatory death sentence for murder. For avoidance of doubt this decision does not outlaw the death penalty, which is still applicable as a discretionary maximum punishment.”

3. The above holding was in my view ably applied in the case **Republic -vs- Ruth Wanjiku Kamande (2018) e KLR. Lessit J** in passing a death sentence to the offender upon consideration of the Judiciary’s guidelines on sentencing as well as the principles stated in the **Murutetu case (Supra)**, and reiterated in numerous decisions thereafter. These are

- a) Age of the offender*
- b) Being a first offender*
- c) Whether the offender pleaded guilty*
- d) Character and record of the offender*
- e) Commission of the offence in response to gender-based violence*
- f) remorsefulness of the offender*
- g) Possibility of reform and social re-adaptation of the offender*
- h) Any other factor that the court considers relevant.*

4. The Supreme Court rendered that the above guidelines do not replace judicial discretion but are only advisory. See also criminal case **No. 40 of 2015 Republic -vs- Johana Munyao Mweni (2018) e KLR.**

5. The objectives and purpose for sentencing are stated in the judiciary sentencing policy guidelines as

(1) **Retribution** - to punish the offender for his/her criminal conduct in a just manner.

(2) **Deterrence**– to enable the offender from committing similar offence subsequently as well as to discourage other people from committing similar offences.

(3) **Rehabilitation** - to enable the offender reform from his criminal disposition and become a law abiding person.

(4) **Restorative justice** – to address the needs arising from the criminal conduct such as loss and damage and to promote a sense of responsibility through the offender contribution towards meeting the victims needs.

(5) **Community protection** by incapacitating the offender.

(6) **Denunciation** – to communicate to the community’s condemnation of the Criminal conduct.

6. The offence of murder is very serious. In the instant case, the accused committed the offence in the presence of his young children. These children will forever be traumatized. Going by the social-enquiry/pre-sentencing report, these children are yet to come to terms with their mother’s loss seven years after the incident. The accused actions were deliberate, to cause pain and death to the deceased.

7. The accused mitigated through his advocate Mr. Olonyi. He sought forgiveness from the court. He was remorseful. He has been in custody for a period of seven years. He is sickly from tuberculosis and chest pains, factors confirmed in the pre-trial sentence report. I also note that the accused is now 61 years old, and looks frail. I was urged to hand a non-custodial sentence.

8. Having considered all the relevant factors, it is my finding that a non-custodial sentence will not be in the accused’s interest as there is no family for him to go to, his children having scattered to different parts of the country and having no home to go to. I have also taken into consideration the gravity of the offence and all factors stated above upon exercise of my judicial discretion I sentence the accused to life imprisonment in jail.

Dated, signed and delivered this 30th Day of April 2019

J.N. MULWA

JUDGE