



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIVASHA

(CORAM: R. MWONGO, J.)

COURT CRIMINAL CASE NO. 32 OF 2015

(Formerly Nakuru Criminal Case (Murder) No. 65 of 2013)

REPUBLIC.....PROSECUTION

VERSUS

CECILIA WARUGURU MURIITHI.....CCUSED

JUDGMENT ON SENTENCE

1. The hearing of this case was conducted by Meoli, J who also wrote and signed the judgment which I delivered on 1st April 2019, the learned Judge having been transferred. The accused was found guilty of murder and it now falls upon me to mete the sentence. In order to render sentence that is apt, and in keeping with the guidelines proposed in the Supreme Court case of **Francis Karioko Muratetu & Another v Republic [2017] eKLR**, it behoved me to read and internalize the judgment of Meoli J.

2. In the **Muruatetu Case** the Supreme Court did not disturb the validity of the death penalty which is the only punishment specified for a person convicted of murder under **Section 204**, of the **Penal Code**. The **Muruatetu Case**, however, determined that the death sentence cannot be imposed without a fair hearing upon the mitigating and extenuating circumstances. Thus, the convict's right to a fair hearing under **Article 50 (2)** of the **Constitution** before imposing the sentence of death, requires a fair and due consideration of several factors.

3. Those factors for consideration, as pointed out by the Supreme Court in **Muruatetu's case** are:

- a) The age of the offender.
- b) Whether the offender is 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) The possibility of reform and social re-adoption of the offender.
- h) Any other factor that the court considers relevant.

These factors extend and vary the 2016 Judiciary Sentencing Guidelines.

4. The state, through Mr. Koima stated that the accused was a first offender. Accordingly, the court directed that a post-conviction probation report be availed to the court.

5. Mr. Gichuki who had acted for the accused throughout the trial, appeared with Mr. Wandugi for the hearing on mitigation. Both counsel

urged the court to be guided by the **Muruatetu** decision which gives the court unfettered discretion on passing sentence.

6. Mr. Gichuki, in mitigation, stated that the accused was a young mother aged 36 years; that her two children are both in primary school and will need their mother's presence; that she has two other adopted children both under sixteen; that the accused was taking care of her aged and sickly mother (he provided the court with the mother's treatment card) at Naivasha District Hospital.

7. Further, counsel stated that the accused was remorseful, and sought that the court temper justice with mercy. He said that there was hope that the accused could be rehabilitated and she could reform. Mr. Wandugi urged that the plight of the accused's children should not be jeopardized, and that she should be given a second chance at life.

8. A Probation Report dated 22nd May, 2019 by the Naivasha Probation Officer was availed. It confirms that the accused has no previous conviction. It points out that the accused has eight other living siblings, all except one of whom are employed or are engaged in business. The accused is married to Simon Kibarabara who carries on real estate business.

9. The report indicates that the accused suffers from cardiac problems and is under medication. She still denies having committed the offence, and asserted that the deceased was a close family friend.

10. The Probation Report indicates that efforts to interview members of the accused's home community were not fruitful. That word had gone around in Maai Mahiu that the offender had been handed a life sentence. Thus, they had reservations on commenting on the issues as they are friends to both families. The family relocated to Lakeview area from Maai Mahiu after the incident. The local administration reported that there had been no previous misconduct on the part of the accused.

11. The victim's father and sister were also interviewed and confirmed that the accused's and deceased's families were friends and neighbours. The deceased, they said, had great potential, was a law student at the University of Nairobi; that she died a painful and traumatizing death; and that a custodial sentence would be appropriate to serve justice for their daughter.

12. The Probation Officer summarized the information gathered in the interviews, and stated that the accused did not evince any anti-social pattern; that no negative reports were received from the local administration; that the parents of the accused are both sickly and were depending on the accused to foot their medical bills. The Probation Officer was concerned that the accused's children are in need of their mother's care and guidance; that the children are in their father's care, and this has been a challenge for him.

13. The probation officer recommended a non-custodial sentence, pointing out that if granted, the accused will need comprehensive rehabilitation including mental health care through a psychiatrist to deter recidivism to such violent crime. She will have to be under close supervision to ensure adherence to the proposed interventions.

14. I have carefully considered the mitigation and the Probation Officer's report. I noted that there is no clear record in the Probation Officer's report concerning the accused's family except the general family profile and information about the children. No information was elicited or provided about the relationship with the accused's husband, Simon Kibarabara and their children, other than that he is having challenges taking care of the children, and that the children need their mother's guidance.

15. One of the critical points made by the Supreme Court in **Muruatetu's Case** was the importance of mitigation. The court stated that:

“.....It is during mitigation, that after conviction and before sentencing, that the offender's version of events may be heavy with pathos necessitating the court to consider an aspect that may have been unclear during the trial process calling for pity more than censure or on the converse, impose the death sentence.”

16. I heard counsel, both Mr. Gichuki and Mr. Wandugi state that the accused was “sorrowful” and “very remorseful for the offence.” The Probation Officer's report, however, states as follows on the attitude of the offender to the offence: ***“The offender says she did not commit the offence.”*** Here, I sense contradiction and insincerity, rather than remorse.

17. The accused was found guilty of the murder of the deceased. The evidence pointed to her having cunningly lured the deceased to her death. The motive attributed to the planned murder was that the deceased was engaged in a romantic affair with the accused's husband, Simon Kibarabara. The court detailed evidence supporting the fact that the deceased and accused's husband were frequently together for long hours both physically and through telephone calls. Call data evidence showed that the deceased and the accused converged at the time of her death. Suddenly, after the deceased's cruel murder, the accused ceased all contact with the deceased's telephone.

18. The murder was a crime of passion. The accused pretended to be uninvolved and put forth a defence that was found to be flimsy and fictitious. The death involved multiple stab wounds to the deceased and scalding by either hot water or a chemical substance. After the murder, the deceased's body was thrown in a field not far from the deceased's home. It was a cruel and cleverly schemed murder.

19. In my view, a non-custodial sentence will pass the wrong message to many thousands of women and men stuck up in situations where their spouses are in romantic affairs with girlfriends and boyfriends, commonly called “mpango wa kando”. A non-custodial sentence may even trigger the idea that murder is fashionable and rewarding – that it is an appropriate cure for mpango wa kando. The answer to this time immemorial malady cannot be murder. The real answer lies not in the liquidation of the third party but in the management of the deviant spouse. That is the message that ought to be communicated.

20. For all these reasons, and having considered all factors, I sentence the accused to life imprisonment with effect from the date of her incarceration on 1st April, 2019. The sentence shall be subject to review after twenty years upon the accused's demonstration of good conduct.

21. The accused has a right to appeal against conviction and sentence within fourteen (14) days.

22. Orders accordingly.

Dated and Delivered at Naivasha this 28th Day of May, 2019

RICHARD MWONGO

JUDGE

Delivered in the presence of:

1. Mr. Koima for the State
2. Mr. Gichuki Advocate with Wafula holding brief for Mr. Wandugi for Accused
3. Accused - Cecilia Waruguru Muriithi - present
4. Court Clerk – Quinter Ogutu