



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL CASE NO. 8 OF 2016

DANFORD KABAGE MWANGL.....ACCUSED

VERSUS

REPUBLIC.....PROSECUTION

SENTENCE

The accused person **Danford Kabage Mwangi** (the accused) was charged with murder c/s 203 as read with s.204 of the Penal Code. It was alleged that on 15th August 2016 at Kiganjo Shopping Centre Kiganjo within Nyeri County he murdered **Emmanuel Khamisi Simiyu (the deceased)**.

In a judgment dated, 17th day of May 2019 I find that the offence of murder c/s 203 as read with 204 of Penal Code was proved to the required standard. I found him guilty and convict him accordingly. Section 204 of the Penal Code provides for the mandatory sentence of death. However, the case of Francis Muruatetu declared that unconstitutional for taking away the discretion of the court in sentencing. The Court recognized that no two murders are exactly the same hence it was unjust and unfair to load all those convicted of murder onto the same guillotine. My understanding of that section is that anyone found guilty of murder is liable to be sentenced to death.

The accused here killed the deceased by stabbing him once with a knife. That one stab wound was so deep it led to the death of the deceased. These were persons known to each other who had engaged in a prolonged quarrel and fight that fateful day.

The accused was said to be a first offender, from a humble background, with four children and the only bread winner.

The pre-sentence report ref PS/NYR/POR/1011 was provided by N.M Muema.

The accused person's position is that the deceased died in unclear circumstances. That it is the deceased and others who wanted to rob him because they knew he had money. That he was very drunk and there was a tussle between him and his attackers.

He was remanded in custody on 13th September 2016 and released on bond on 21st December 2016.

The report also reveals that his family does not believe that he is facing a murder charge. He is married with four children. However, he was described as reserved.

The family of the victim expressed bitterness and would want the ultimate penalty for the accused person. They feel they lost a son and were left to take care of his child.

This is how the accused committed the murder.

“By picking the sharp knife and rushing to stab the deceased and using that much force, the accused intended to cause grievous harm. The thought process of rushing to pick the knife stabbing the deceased and then running away, that adds up to create the impression of intention to cause grievous harm.

What more evidence of malice aforethought as defined under s.206 of the Penal Code could this court ask for? It is established where there is evidence proving any or more of the following circumstances: -

a) An intention to cause death of or to do grievous harm to any person, whether that person is actually killed or not.

In this case, the injury caused on the deceased demonstrated that the person who caused it intended to do grievous harm by its nature and the nature of the weapon used.

b. Knowledge that the act or omission causing death will probably cause death of or grievous harm, to some person whether that person is actually killed or not, although such knowledge is accompanied by indifference whether death/grievous bodily harm is caused or not, or a wish that it may be caused.

The taking of a sharp object, and applying force to it sufficient to cause the kind of injury inflicted on the deceased.

Thus the fact of death was proved. It was unlawful as it resulted from a stab wound.

It was the kind of murder committed in the moment. One stab wound that proved fatal.

It is clear from the report that the accused is still in denial. His family has not accepted that he could kill a person another person but that is what happens.

Supreme Court in the **Muruatetu** case, supra sets out guidelines to assist the courts in the determination of the sentence where mitigation was not considered prior to the said case. The guidelines are as follows

“As a consequence of this decision, paragraph 6.4-6.7 of the guidelines are no longer applicable. To avoid a lacuna, the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

- (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) the possibility of reform and social re-adaptation of the offender;***
- (h) any other factor that the Court considers relevant.***

We wish to make it very clear that these guidelines in no way replace judicial discretion. They are advisory and not mandatory. They are geared to promoting consistency and transparency in sentencing hearings. They are also aimed at promoting public understanding of the sentencing process. This notwithstanding, we are obligated to point out here that paragraph 25 of the 2016 Judiciary Sentencing Policy Guidelines states that:

GUIDELINE JUDGMENTS

Where there are guideline judgments, that is, decisions from the superior courts on a sentencing principle, the subordinate courts are bound by it. It is the duty of the court to keep abreast with the guideline judgments pronounced. Equally, it is the duty of the prosecutor and defence counsel to inform the court of existing guideline judgments on an issue before it”.

Taking into consideration the circumstances of the case, that accused is a first offender, and the period he spent in custody, he is sentenced to 10 (TEN) years’ imprisonment.

Right of Appeal 14 days.

Dated, delivered and signed in open court this 28th June 2019 at Nyeri.

Mumbua T.Matheka

Judge

In the presence of:-

Court Assistant: Juliet

Mrs.Owour for state

Mr.Gathiga Mwangi for accused

Accused-present

Judge