



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT CRIMINAL CASE NO.7 OF 2014

REPUBLIC.....PROSECUTION

VERSUS

JACKSON NGARA NDERITU.....ACCUSED

SENTENCE

Jackson Ngara Nderitu was charged with the murder of **Philip Irungu Muturi** contrary c/s 203 as read with 204 of Penal Code.

The offence was committed on 1st March 2014 at Gakanga Village Endarasha Location within Nyeri County.

After the full trial through the judgment delivered on 30th April 2019 I found him guilty as charged and convicted him accordingly.

The accused was said to be a 1st offender by the state counsel Mr. Gitonga. In mitigation his counsel Mr. Njuguna Kimani submitted that he was 27 years – separated from his wife, remorseful. That he had been in custody for 5 years and 29 days and had learnt that crime does not pay.

The pre-sentence report was filed on 16th May 2019 Ref No.PS/NYS/POR/995 prepared by Irene Thurairia Probation Officer.

Both the accused's family and the family of the victim were interviewed in line with Section 329 A of the Criminal Procedure Code and Section 12 of Victim Protection Act no 17 of 2014. From the report the accused suggests that he acted in self defence something that never came up in his defence as he denied completely having seen the deceased that morning. This would amount to an afterthought, a feeble, belated attempt at getting at the strings of mercy that hold the scales of justice.

The wife of the victim, his mother in law has suffered the loss of her husband and had to watch him die from the panga cut inflicted by the accused as they helplessly tried to look for help.

It was evident even during the trial that the trauma had not been dealt with. We have in place a legal regime for the safeguarding, preservation, promotion and protection of the rights and welfare of the victim. However, considering their 'second' class position vis a vis the rights and welfare of the accused person, the victim continues to suffer for lack of the requisite psycho-social support. It is strongly recommended that the time is overdue for the requisite State Agencies to reveal themselves to Kenyans and to tell Kenyans who on a daily basis fall victim to crime. The jurisprudence enhancing the protection of the rights of the accused person continues to grow without a similar scenario for the victim. While for instance the away the *mandatoriness* of the death sentence, has been taken away and death row convicts may now be resented to terms of imprisonment in lieu of the death sentence, one does not find a contemporaneous fiat with regard the manner in which the victims who must, as a matter of right, be consulted in resentencing will be dealt with.

Be that as it may, in the present case, the accused's family does not seem to have good standing in the community- described as 'hostile, violent and uncooperative'. Accused's wife was pregnant with his 2nd child when he killed her father. The child is now 4 years old.

The source of all this was the fact that accused's wife had left him, and returned to her parents. He went there, took the baby who was still suckling and went away with her in the expectation that his wife would return. Instead, she came with her parents to collect the baby-meaning that marriage/relationship was being terminated. Instead of finding the appropriate solutions, he chose to attack his father in law with a panga, killing him on the spot.

As a society, we have become so angry and so uncommunicative that even marital problems are solved with fatal violence – surely the accused could have found another way to deal with the issue.

His wife described him as violent, and had threatened to kill her. She lives in fear that should he be released- he will carry out his threat.

The impact of his crime was to shock the peaceful village of Liiiru where he hails from, remove the victim's breadwinner and deny his own children –not only the right to live and be cared for by their own father but the '**love and care**' of their grandfather, who from his action cared enough to personally go to fetch his infant grandchild from his angry father, and his own son in law, something that ended up costing him his life. Worse still, the violence meted against him was unnecessary as it was unprovoked.

The accused denied it all along but it dawned on him after conviction that there was no escape and he came up with the story of acting in self defence.

Section 204 of the CPC has been 'amended' by the **Muruatetu** case to remove the mandatory nature of the death sentence. Hence the accused is liable to death sentence.

After taking into consideration the circumstances of the offence, the period already spent in custody, the age of the accused person and the fact that accused needs to pay for his crime, the accused person is sentenced to 25 years imprisonment.

Right of Appeal Explained.

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

Mumbua Matheka

Judge

In the presence of:-

Court Assistant: Juliet

State counsel: Mrs.Owour

Mr.Njuguna Kimani for accused

Accused present

Judge