



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**HIGH COURT CRIMINAL CASE NO. 74 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JAMES NGANGA GICHURU.....ACCUSED**

**SENTENCE**

1. The convict was on 14<sup>th</sup> day of February 2019 given Valentine gift by the court, when he was found guilty and convicted of the lesser charge of manslaughter having initially been charged and tried of murder. The court is now called upon to pass an appropriate sentence for the said offence contrary to **Section 202** as read with **Section 205** of the **Penal Code**, which provides that any person who commits the felony of manslaughter is liable to imprisonment for life.

2. What constitutes imprisonment for life which is the maximum sentence available under **Section 205** has received judicial pronouncements around the world. This court in the case of **REPUBLIC v ELIZABETH MUGOYWA, NAIROBI CRIMINAL CASE NO. 15 OF 2015** had this to say:-

***“3. The starting point in this assignment is the punishment Section of the offence Section 205 of the Penal Code which provides as follows:-***

***“Any person who commits a felony of manslaughter is liable to imprisonment for life.”***

***4. In defining what the above Section means, Muriithi J. in the case of REPUBLIC v PHILIP MUCHANI KITHIWA stated that the maximum sentence for manslaughter is imprisonment for life as prescribed in Section 205 of the Penal Code. This therefore means that the court can give any sentence with life imprisonment being the maximum. As to what constitutes life imprisonment the Supreme Court of Kenya in the case of FRANCIS KARIUKI MURUATETU & ANOTHER v REPUBLIC & THREE OTHERS [2017] eKLR had this to say:-***

***“[88] Unlike some of the cases mentioned above the life imprisonment sentence has not been defined under Kenyan Law (see the Kenya Judiciary Sentencing Guidelines 2016 at paragraph 23.10 page 51) It is assumed that the life sentence means the number of years of the prisoners natural life, in that it ceases upon his or her death.”***

3. In mitigation the convict through his Advocate stated that he had served the police force for thirty (30) years and had been in the course of his duty in custody of various guns and rifles, for the purposes of repairing them and had not mishandled any during the said period. It was submitted that he was an honest man who admitted that the death of the deceased occurred through his shooting. It was stated further that he had a wife and school going children whom he was their sole bread winner. He still had years to serve in the civil service.

4. Mr. Okeyo for the prosecution submitted that there was nobody at the scene who restrained the convict from leaving but decided not to do so. It was submitted that the convict misused his firearm leading to unnecessary loss of life.

5. In compliance with Sentencing Policy Guidelines and directions, the court ordered for Pre-sentencing report in which it was stated that the offender was assessed with scientific tool and was rated as low-risk. He had a stable employment over the period of time and stable relationship with his family. It was stated that on the material day the deceased spotted the offender talking to some bar maid whom he later learnt was the deceased's girlfriend and there was altercation which led to a fight. It was stated that the offender was remorseful and sought non-custodial sentence.

6. On the Victim Impact Statement it was stated that the deceased had separated with his wife and was a known land broker at Kamulu Area known to be an alcoholic which lead to separation with his wife. It was stated on recommendation that the convict be granted a chance on

probation.

7. The objectives of sentencing are now well settled in Kenya as can be seen from the Judiciary of Kenya Sentencing Policy Guidelines Number 4.1 which are as follows:-

- 1) **Retribution: to punish the offender for his/her criminal conduct in a just manner.**
- 2) **Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.**
- 3) **Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law abiding person.**
- 4) **Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.**
- 5) **Community protection: to protect the community by incapacitating the offender.**
- 6) **Denunciation: to communicate the community's condemnation of the criminal conduct.**

8. Whereas the convict is suitable for rehabilitation from which non-custodial sentence has been recommended, I have taken into account what I stated in **REPUBLIC v WILFRED MWITI, NAIROBI CRIMINAL CASE NO. 61 OF 2011** as follows:-

***"13. The accused has been convicted of manslaughter and in passing an appropriate sentence herein I am guided by the decision of Justice Muriithi in High Court of Kenya at Machakos Criminal Case No. 14/2013 REPUBLIC v PHILLIPI MUTHIANI KATHIMA where the judge stated that the object of sentence is primarily to punish for an offence and or to reform the accused person in such manner as to as appropriate circumstances of the case deter the repetition of the offence by the accused and others taking into account the moral blame worthiness of the accused, the prevalence of the crime and the situation of the accused himself. In this case since the accused had been in custody for 2½ years he was sentenced to one year probation for manslaughter.***

***14. In the case of REPUBLIC v CHRISANDOS WIYALA KAKAMEGA HC Criminal Case No. 26 of 2016 Justice Njoki Mwangi on 18/2/2016 sentenced an accused person who has been in custody for 3 years 8 months to five years imprisonment for manslaughter, whereas in High Court of Kenya at Mombasa criminal Case No. 41 of 2014 REPUBLIC v IP VERONICA GITAHU & ANOTHER a case involving police killing of a minor Muya J sentenced each of the accused persons to seven (7) years imprisonment."***

9. As stated in the above authority the police officers are given guns paid for by tax payers for the purpose of providing security and are under heavy obligation and duty while they have custody of the said guns and whereas in this case the deceased went out of his way to try and take the gun from the convict being cheered by his girlfriend by shooting at the same three times the convict ought to had known better. He was at a place where he was well known having operated business thereat. He knew some of the people at the scene thereby mitigating the potential danger he might have been in of his gun being taken away.

10. The action of the accused in shooting the deceased three times at the hand, chest and arm shows that he was reckless and in the circumstances misused his gun. The threat he was under does not match the force he used.

11. Justice P.N. Bhagwati in **SANTA SINGH v STATE OF PUNJAB [1976] 4SCC 190** stated that:-

***"a proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances extenuating or aggravating of the offence, the prior criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, society and social adjustment, the emotional and mental conditions of the offender, the prospects for the rehabilitation of the offender, the possibility of the return of the offender to a normal life in the community..."***

12. Whereas the offender has been assessed as low risk with the possibility of rehabilitation, having stated that he was under responsibility as a police officer while in possession of a gun, and there being a possibility of love triangle in this matter, I have come to the conclusion and hold that a sentence to a term of four (4) years to be served as herein under would be the most appropriate and adequate sentence herein:-

- a) **One (1) year in custody as a warning to fellow police officers and or licensed gun holders on the proper use of firearms.**
- b) **Three (3) years thereafter on probation for rehabilitation of the offender and placement in society/community.**

13. I have taken into account the fact that the convict was on bond during the period of trial and must have as the good Lord advised King Hezekiah in Isaiah 38:1 put his house in order.

14. The convict and the prosecution have right of appeal both on conviction and sentence and it is so ordered.

**Dated, delivered and signed at Nairobi this 27<sup>th</sup> day of June, 2019.**

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**J. WAKIAGA**

**JUDGE**

**In the presence of:-**

*Mr. Naulikha for the State*

*Mr. Onganya for Orengo for the accused*

*Accused present*

*Court assistant – Karwitha*