



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 8 OF 2011**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**WILSON MISIKO MUNGASIA.....ACCUSED**

**SENTENCE**

1. The accused was tried by Justice Sitati at Kakamega Law Courts. The Judge however went on transfer before delivering the judgment. She sent back the court file for judgment to be delivered on her behalf. The judgment was delivered by this court on the 26<sup>th</sup> October, 2018 wherein the learned judge found the accused guilty of the murder of one Seline Ikambi Anasi on 10<sup>th</sup> February, 2011. As the trial judge was no longer at the station the duty fell on me to sentence the accused.

2. **Mr. Munyendo advocate** for the accused mitigated that he is 22 years old and that he is a first offender. That he is remorseful for committing the offence. That he was taking care of his parents when he was arrested. The advocate pleaded with the court to be lenient on the accused.

3. The state through the prosecution counsel **Mr. Juma** said that they did not have records for the accused.

4. The brief facts of the case were that the accused was a grandson to the deceased who at the time of her death was aged 79 years. That the accused was staying with the deceased at her home where he was helping her with house chores. That on the 10/2/2011 the deceased disappeared from her home. On the following day her body was found at a sugar plantation near her home. A postmortem was conducted on the body that revealed the cause of death to have been closed head injury. There was a male condom inside her vagina which was evidence of sexual assault. The accused was charged with the offence. He was tried and convicted.

5. This court called for a pre-sentence report that was prepared by a probation officer Mr. Bernard Wangatia. The report indicates that the accused is aged 28 years. That he had been staying in Nairobi. That he had just returned to his father's rural home and started to stay with the deceased. He then committed the offence. The report indicates that the family members are opposed to the offender being given a lenient sentence as he killed his own grandmother.

**Sentence –**

6. Sentencing is a discretion of the trial court. In **Ambani Vs Republic**, the High Court stated that a sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that the court should look at the facts and the circumstances of the case in its entirety before settling for any given sentence.

7. The Court of Appeal **Thomas Mwambu Wenyi Vs Republic (2017) eKLR** cited the decision of the Supreme Court of India in **Alister Anthony Pereira Vs State of Maharashtra** at paragraph 70-71 where the court held the following on sentencing:-

*“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.*

8. The Judiciary Sentencing Policy Guidelines lists the objectives of sentencing at page 15 paragraph 4.1 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 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. Criminal conduct ordinarily occasions victims, communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.

5. **Community protection:** To protect the community by incapacitating the offender.

6. **Denunciation:** To communicate the community's condemnation of the criminal conduct.

9. Section 333 (2) of the Criminal Procedure Code requires a sentencing court to take into account the period spent in custody awaiting trial.

10. In **Francis Karioko Muruatetu & Another –Vs- Republic & Others Petition No. 5 of 2015 (2017) eKLR**, the Supreme Court declared as unconstitutional the mandatory death sentence for murder as provided in the Penal Code and held that:-

***“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.”***

In the premises the sentence for murder under Section 204 of the Penal Code is a discretionary maximum.

11. I have considered authorities in other cases where sentences for murder were imposed. In **Republic –Vs- Stephen Wekesa Wasike (2014) eKLR** Mutuku J. sentenced the accused to 20 years imprisonment after convicting him of murder. In **Elizabeth Mwiyaithi Syengo – Vs- Republic (2019) eKLR** where the petitioner had been sentenced to death for the offence of murder Kemei J.

re-sentenced the petitioner to serve 20 years imprisonment.

12. I have considered the above stated principles of sentencing and the authorities cited above. Though the accused murdered a defenceless old woman I do not think that a death sentence is warranted in the circumstances of the case. A prison term would serve the interests of justice in the case.

13. The accused is a first offender. He has been in custody for a period of 8 years awaiting trial. The accused not only murdered an old woman but there is evidence that he also raped her. The sentence that ought to be meted out on the accused has to be commensurate with the gravity of the offence that he committed. I sentence him to 22 years imprisonment.

**Delivered, dated and signed at Kakamega this 30<sup>th</sup> day of July, 2019.**

**J. NJAGI**

**JUDGE**

**In the presence of:**

**Miss Omondi for state**

**Miss Mukhwana for accused**

**Accused - present**

**Court Assistant - George**

**14 days right of appeal.**