



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

HCCR NO. 2 OF 2016 (MURDER)

REPUBLIC.....PROSECUTOR

VERSUS

BENSON MURATHI.....1<sup>ST</sup> ACCUSED

DGM.....2<sup>ND</sup> ACCUSED

SIMON MUKUNDI.....3<sup>RD</sup> ACCUSED

DANIEL GITONGA MWANGANGI.....4<sup>TH</sup> ACCUSED

SENTENCE

This court has considered the mitigating circumstances of this case. The prosecution has reiterated that the deceased underwent a lot of pain owing to the fact that after suffering serious injuries 2<sup>nd</sup> subject and 4<sup>th</sup> accused respectively subjected her to gang defilement. On that basis the prosecution has urged this court to consider that fact as an aggravating factor in determining an appropriate sentence. It is also true that the 2<sup>nd</sup> accused is now an adult (approximately 19 years old) because at the material time (22<sup>nd</sup> March 2016) he was found to be 17 years old. He committed heinous act when he was a teenager which means that in law as provided under **Section 14** of the **Penal Code** he had reached an age where he is taken to be criminally responsible for his actions. So while both the convicted persons have pleaded for leniency owing to their young age, I am satisfied that both of them are equally and criminally responsible for actions which as I have pointed out really aggravated the condition of the deceased. I do agree with the prosecution that the deceased must have really underwent a gruesome death after being defiled left for dead. However I am alive to the provisions of **Section 25(2)** of the **Penal Code** which provides that a person who commits murder whilst under the age of 18 years cannot be sentenced to death but should in lieu of death sentence be sentenced to be detained at the pleasure of the President. It is not in the best interest of the 2<sup>nd</sup> convict who was a '*child*' within the children's Act at the time of commission of the offence to be detained at the pleasure of the President. **Section 190(2)** of the **Children's Act** prohibits the sentencing of child offenders to death. I am therefore inclined upon taking all mitigating factors and the law into consideration to sentence the 2<sup>nd</sup> convict to 12 years imprisonment while the 4<sup>th</sup> convict having committed the act while he was an adult is convicted to serve 15 years imprisonment. Right of Appeal 14 days.

**Dated, signed and delivered at Chuka this 25<sup>th</sup> day of July, 2019.**

**R.K. LIMO**

**JUDGE**

**25/7/2019**