



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

CRIMINAL CASE No.4 of 2014

BETWEEN:

REPUBLIC.....PROSECUTOR

VERSUS

GABRIEL KENGO NDAIKWA.....ACCUSED

SENTENCE

1. The Convict before the Court was charged with Murder contrary to **Section 203** of the **Penal Code, Cap 63, Laws of Kenya**. On 30th May 2018, this Court (differently constituted) found the Accused guilty of murdering GRACE NYAMVULA MWANJALA, the woman with whom he was co-habiting.
2. The Pre-sentence Report was filed by the Probation Service on 6th November 2018. The Author of the Report is Mr Anthony Piri, the Probation Officer for Voi. The Report does not recommend a non-custodial sentence. The Report states, in view of the prevailing scenario, a non custodial sentence isn't expedient at the moment and is respectfully not recommended. In mitigation the Accused states that he has undertaken a course, the details of which were not clarified from "Fellowship International". The Perpetrator states that demonstrates that he has reformed.
3. The Information laid before the Court relied on **Section 203** as read with **Section 204** of the **Penal Code**. **Section 204** imposes the death penalty. However, this Court has a wide discretion on what is the appropriate sentence in the particular circumstances of this case. Looking first at the circumstances of the offence. The Deceased and the Offender were in a romantic relationship. They were co-habiting except for the times when the Offender would beat the Deceased causing her to flee to her family and friends for her own safety. The Probation Report states that the relation was not cordial. "Constant wrangles, mistrusts and fights were the hallmark of the union". It was also a hallmark of the union that when the Offender would beat the Deceased he would throw her clothes out of the house. The Deceased was the Mother of 4 Children. She worked as a house-help in Kaloleni. She was greatly loved by her family and friends. The Offender was not the father of any of her Children and that was a cause of friction. The evidence of PW-2 a pastor at the Church they attended was that the incidents were so frequent and extreme that he was unable to resolve them so he asked them to go elsewhere.
4. The Offender was aged around 27 at the time of the offence. He still claims to be innocent. He is asking the Court to be lenient and therefore he shows no remorse. The Offender has a previous record. It is unclear from the Report whether he has two or three convictions. What is clear is that when he was given a non-custodial sentence, he re-offended while serving a Community Service Order. It is also clear that the pattern of offending was escalating. The Offender was also convicted of theft while he was working as a watchman. That suggests his offending takes place "close to home".
5. The circumstances and particulars and the characteristics of the offence are concerning. The Deceased had separated from the Offender and returned to her family following a violent incident when her clothes were thrown away. He enticed her back and on 21st August 2016 took her on a trip from which she never returned. He told the Deceased, her family and friends that they were going to visit his brother in Buguta for the day. It seems they never arrived in Buguta. On 24th August 2016 the Offender returned to their home in Voi but the Deceased did not. The Offender then engaged in an elaborate charade with the family of the Deceased telling them that they had parted ways on route and she had proceeded on to Kwale to see her other Children. All the while the Offender could see the family members were distraught at not being able to find her.
6. Eventually, the Offender informed the Pastor that her body could be found near Ndara. He then sought to mislead the family as to the perpetrators. He also sought to denigrate his victim by suggesting that one of the many men she had a relationship with must have done it. In that he sought to blame her and excuse his behavior by hiding behind a smoke screen of the Victims perceived immorality. It is also important to consider that the Offender waited until 27th August 2014 before he confided in the Pastor. By that time the body had

decomposed and was eaten by wild animals. The cause of death was cardio-pulmonary arrest. However, the Post-Mortem Report does not tell us what type of injuries led to that outcome. The reason is that the evidence was literally eaten by animals. The position of the body demonstrated that it had been dragged from elsewhere. The body had its clothing removed and thrown away. The Witness identified the petticoat as belonging to the Deceased. Again, the Court notes that the Offender liked to throw away the clothes of the Deceased when he assaulted her. The body was found with male urine in the vicinity. That is a clear expression of disdain.

7. It is therefore clear to this Court that the Deceased met her death through an assault by the Offender. It is also clear that the Offender is a repeat offender and that his pattern of offending is escalating. That is so in the case of theft and that is also the case in the case of this pattern of gender based violence escalating to murdering his victim. The Offender's cynical manipulation of the family shows that he enjoyed the psychological harm he was causing. The Deceased's son told he Probation Officer that he still suffers from nightmares. The Family are finding it difficult to come to terms with the death.

8. For those reasons, it is clear that the Offender is a danger to society and to women in particular. This Court therefore sentences him to spend the rest of his life in prison. Sentence of Life Imprisonment ordered.

9. Offence to be included in the Sexual Offenders Register.

Order accordingly,

FARAH S. M. AMIN

JUDGE

SIGNED DATED AND DELIVERED at Voi on this the 20th day of December 2019

In the Presence of:

Court Assistant: Josephat Mavu

Prosecution: Ms Mukangu

Offender: Present in Person.