



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 44 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH ONYANGO OCHIENG.....ACCUSED

SENTENCE

1. The convict **JOSEPH ONYANGO OCHIENG** was on 13/12/2017 found guilty and convicted of the murder of **BENSON OLUOCH NYAMBUTE** contrary to Section 203 of the Penal Code.
2. The court is now called upon to pass an appropriate sentence thereon as per Section 204 as read against the Supreme Court decision on the mandatory nature of the death penalty.
3. In mitigation the convict stated that he was remorseful for his action and being a first offender sought for a lenient sentence.
4. In fulfillment of the sentencing policy guidelines, the court ordered for a presentencing report which has now been filed and in which it was stated that the convict sustained head injuries from a panga cut during the incident which now requires specialized treatment. It was reported that the deceased had the character of seducing women on the plot regardless of their mental status and was also quarrelsome. The accused had been informed by his wife that the deceased had tried to seduce her and this is what led to the quarrel between them.
5. On victim impact statement it was stated that the deceased was married with three (3) children aged 13 – 8 years who are currently under the custody of their grandmother. At the time of his death the deceased was the sole breadwinner for his family including three orphaned children of his late brother and since the family had been deprived of the support they proposed that the convict should face the full force of law as he did not have the right to take another person’s life.
6. On behalf of the convict it was stated that the same was aged 27 years, his wife left soon after his arrest and that the same used to provide for his siblings who now misses that support and were pleading for mercy on his behalf as he was alleged to had been a law abiding person before the commission of the offence herein. They pleaded for a non-custodial sentence to enable him undergo corrective surgery.
7. I have taken into account the circumstances of the commissions of the offence herein and note that the initial quarrel between the deceased and one Esther who was allegedly a girlfriend of the deceased and her relatives did not involve the accused. When the accused came to the plot and found out that there had been a fight involving Ben who had allegedly attempted to seduce his wife he decided to take the law into his hand and laid in wait for the deceased.
8. It is clear that the attack on the deceased by the convict was uncalled for as the accused had the option of moving away from the said plot if he was not happy with the conduct of the deceased seducing his wife. I have however taken into account the age of the convict and the fact that he same has been in custody for a period of four years and further the fact that the deceased through his behaviour contributed to the factors that led to his death and is of the considered opinion that the convict is a candidate for rehabilitation through custodial sentence so as to learn how to manage disputes.
9. I am of the considered opinion that a custodial sentence of fifteen (15) years from 9/6/2014 when the same first appeared in court would be an appropriate punishment to the same and it is hereby ordered.
10. The accused has Right of Appeal both on conviction and sentence.

DATED, DELIVERED and SIGNED at Nairobi this 27th day of February, 2018

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Meroka for the State

Mr. Oduor for Saenyi for the accused

Accused person present

Court clerk Tabitha