



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO. 72 OF 2010

REPUBLIC RESPONDENT

VERSUS

PATRICK MUNDIA MUIRU ACCUSED

SENTENCE

1. The convict **PATRICK MUNDIA MUIRU** was on the 11th day of December, 2017 found guilty and convicted of the murder of **JOSEPH MUNDIA MUIRU** contrary to **Section 203** of the **Penal Code**. The court is now called upon to pass an appropriate sentence under Section 204 as read against the recent Court of Appeal decision in the case of **FRANCIS MURUATETU & ANOTHER**.

2. In mitigation the convict through his Advocate on record submitted that the accused was remorseful of what happened and that the deceased was his step brother. He stated that the convict was aged about 43 years and the sole breadwinner to his wife and three children. It was submitted that the same had spent many years in custody during which he had undergone reformation and urged the court to allow him continue with the said reforms so as to be a law abiding citizen. It was submitted that in terms of the Supreme Court decision on the mandatory nature of the death sentence the court now can give any sentence rather than death.

3. On behalf of the prosecution it was stated that the nature of the commission of the offence herein was bad in that the convict attacked his step brother whom he should have protected and therefore an appropriate sentence was prayed for.

4. The court ordered for pre-sentencing report which was filed and in which it was stated that whereas the convict alleged that he was married with three children his family members were not aware of the said family though it was stated therein that the same had separated with his wife. The convict did not admit to the offence and therefore could not understand why his step mother picked on him yet there was no bad blood between them.

5. On the victim impact statement it was stated that the deceased was an only son among three siblings and according to the mother the victim was loved by their father which did not augur well with the other step brothers and in particular the convict.

6. The purpose or objectives of sentence as per the Judiciary Sentencing Guidelines No. 4 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 refrain from the criminal conduct 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 occasion victims', communities' and offenders' needs and justice demand that these are met. Further to promote a sense of responsibility through the offenders 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.

7. From the material placed before the court it is clear that the killing of the deceased was a senseless act on the part of the convict and as if

that was not bad enough having killed the same he dumped the body into inside the family water well thereby endangering the lives of the entire family who were using the said water well. As submitted by the prosecution the accused was under an obligation to protect the deceased and nurture him up the love of their father notwithstanding.

8. The convict's attitude towards the crime clearly shows that the same is a danger to society and the only sentence appropriate for his action is a deterrence sentence both to the accused and to the rest of the community. I therefore sentence the convict to suffer death as in law provided for as there were no mitigating factors advanced to enable the court rule otherwise.

9. The convict has right of appeal both on conviction and sentence.

DATED, SIGNED and DELIVERED at Nairobi this 20th day of February, 2018

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J. WAKIAGA

JUDGE

In the presence of:-

Ms. Wegulo for the State

Mr. Ratemo for Wamwayi for the accused

Accused present

Court clerk Tabitha