



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**HIGH COURT CRIMINAL CASE NO 15 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ELIZABETH MUGOYWA.....ACCUSED**

**SENTENCE**

1. The convict **ELIZABETH MUGOYWA** was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code** but at the conclusion of her trial was found guilty and convicted of the lesser offence of manslaughter contrary to **Section 202** as read with **Section 205** of the **Penal Code**.

2. What the court is now called upon is to determine what would be the most appropriate, adequate and just sentence herein taking into account the evidence tendered before court.

3. The starting point in this assignment is the punishment Section of the offence. **Section 205** of the **Penal Code** which provides as follows:-

***“Any person who commits a felony of manslaughter is liable to imprisonment for life.”***

4. In defining what the above Section means, Muriithi J. in the case of **REPUBLIC v PHILIP MUCHANI KITHIWA** stated that the maximum sentence for manslaughter is imprisonment for life as prescribed in **Section 205** of the **Penal Code**. This therefore means that the court can give any sentence with life imprisonment being the maximum. As to what constitutes life imprisonment the Supreme Court of Kenya in the case of **FRANCIS KARIUKI MURUATETU & ANOTHER v REPUBLIC & THREE OTHERS [2017] eKLR** had this to say:-

***“[88] Unlike some of the cases mentioned above the life imprisonment sentence has not been defined under Kenyan Law (see the Kenya Judiciary Sentencing Guidelines 2016 at paragraph 23.10 page 51) It is assumed that the life sentence means the number of years of the prisoners natural life, in that it ceases upon his or her death.”***

5. In mitigating, the convict through her advocate on record sought non-custodial sentence based on the Pre-sentencing Report while on behalf of the prosecution it was submitted that the convict be treated as a first offender since there was no previous record on her.

6. In compliance with the Sentencing Policy Guidelines, the court called for Pre-Sentencing Report in which it was stated that the offender dropped out of standard seven (7) after her parents failed to raise

KCPE registration fee and was thereafter employed as a house help. Out of desperation she then got married in a marriage that was characterized with conflicts and unmet basic needs as the husband was unconcerned about her welfare and that of their child. She then moved out before meeting her husband at the time of the commission of the offence and were blessed with one child.

7. Her husband then married the deceased whom she lived with in harmony before she was rented for a house within the area. The deceased thereafter became disgruntled as she felt that their joint husband was spending much time and resource on her and being favoured which brought her to the house of the offender on the fateful day. It was further stated that her husband had since moved on and remarried and was disinterested in anything to do with the offender.

8. The offenders children are currently living with her mother who is in poor health and unable to provide for the children. They sought non-custodial sentence to enable the convict provide for her children.

9. On the Victim Impact Statement it was stated that the deceased did not tell her family that she was entering into a polygamous union which they only came to hear of after her death. Her four (4) years old daughter is staying with the parents of their husband. The family is not opposed to the convict being placed on non-custodial sentence. It was therefore recommended that the convict be placed on non-custodial sentence to undertake rehabilitation and counselling in anger management.

10. The objectives of sentencing as per the Judiciary of Kenya Sentencing Policy Guidelines are as follows:-

#### Paragraph 4.1

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/her 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.
5. **Community protection:** to protect the community by incapacitating the offender.
6. **Denunciation:** to communicate the community's condemnation of the criminal conduct.

11. From the evidence tendered and the social inquiry report, it is the deceased who moved into the accused life by marrying her husband and having been twice unlucky it is clear that the convict took it upon herself to win and maintain the love of their joint husband to the chagrin of the deceased. The convict was offended more than the deceased whom she had welcomed into her house as any traditional African woman was meant to do and therefore had no reason to get rid of her as she had the man under key and lock.

12. Whereas a life was lost due to the irresponsible nature of their joint husband who was unable to love and maintain the woman equally having gone against God's original plan, I have taken into account the fact that the convict has been in custody since 2/2/2015 and unless a miracle happens she lost the love of her life which was the cause of all these problems and must now start her life a fresh with the death of her co-wife ever always present in her mind which is punishment enough and has come to a conclusion that she ought to be given a second chance to pick up her pieces with the hope that she has had time to reflect on what life can bring to your door step.

13. I am therefore satisfied that a non-custodial sentence aimed at rehabilitating the offender is the most

appropriate and just sentence herein. The convict is therefore sentenced to a probation period of three (3) years afresh thereafter under the supervision and counselling of the Probation Officer and to know that sometimes the love of men is tempting noting that the man who she fought for has moved on and as if he was commanded by God to marry all the available women has since married and moved on while the convict is in remand custody.

14. The parties have a right of appeal on both conviction and sentence. It is so ordered.

**DATED, DELIVERED and SIGNED at Nairobi this 30<sup>th</sup> day of April 2018.**

.....

**J. WAKIAGA**

**JUDGE**

**In the presence of:-**

*Miss Wegulu for the State*

*Mr. Onyango for Wachira for the accused*

*Accused present*

*Court Assistant - Paul*