



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**HIGH COURT CRIMINAL CASE NO 97 OF 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ERIC MUYA MWANIKI.....1<sup>ST</sup> ACCUSED**

**DALMAS OTIENO JUMA.....2<sup>ND</sup> ACCUSED**

**SENTENCE**

1. The convicts **ERICK MUYA MWANIKI** and **DALMAS OTIENO JUMA** were convicted of the offence of murder of **THOMAS JAGONGO AMESO** on 13/12/2017. At the time of the said convict the 2<sup>nd</sup> accused/convict indicated to court that he was not ready to mitigate until he is supplied with typed copies of the proceedings which explains the delay in passing the sentence herein.
2. Upon being supplied with copies of the proceedings which is their constitutional right, the first accused through his Advocate and which he orally confirmed in court stated that he did not wish to make any mitigation and had nothing to say. The second accused/convict through his Advocate Mr. Wakaba stated that at the time of his arrest he was aged 18 years and had been in remand custody since the said time. He therefore urged the court to take into account the said period in remand custody while passing an appropriate sentence. He further stated that he was unmarried without children and therefore prayed to be given a second chance so as to start a family of his own. He sought for lenient sentence so as to be rehabilitated into a useful member of society.
3. The State through Miss Wegulu submitted that the convicts stabbed the deceased while in the process of robbing him which shows that they were persons of evil character and were not remorseful having caused the loss of life to the deceased and loss of love and affection of his kins and wife who was unable to pay school fee for the kids. She sought for a deterrence sentence.
4. In compliance with the Judiciary Sentencing Policy Guidelines the court called for Pre-sentencing report wherein the following were highlighted:-

**1<sup>ST</sup> ACCUSED**

a) His parents separated while he was seven (7) years old and was mainly raised by his father. He insists that he did not commit the offence but sought leniency. His relatives could not be traced as he alleged to have lost contact with them.

**2<sup>ND</sup> ACCUSED**

b) Was born to a single mother who stated that the accused had disappeared for about one year without coming home only for her to learn that he had been arrested. The accused blames the police officers who had asked him to assist them load the deceased into their lorry.

c) His family is receptive of him and are willing to welcome him back.

5. On the Victim Impact Statement it was stated that the deceased was a family man with five (5) children the youngest being eight (8) months. The deceased was the sole bread winner and the wife was traumatized being unable to now raise school fees for the children.
6. The objectives for sentencing as per the Judiciary Sentencing Policy Guidelines 4.1 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 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.***

7. Of the two convicts, the first accused has a very negative attitude towards the entire process and has not learned anything from the period he has been in remand custody. Whereas the 2<sup>nd</sup> accused has a positive attitude and can benefit for rehabilitation, as submitted by Miss Wegulu for the state, this offence was committed while the convicts were in the process of robbing the deceased and this therefore calls for a deterrence sentence.

8. Balancing the issues raised in the Pre-sentencing Report and the rights of the victim, I have come to the conclusion that an imprisonment sentence will best serve the interests of justice in this matter. I therefore sentence both the accused to a term of twenty (20) years imprisonment.

9. Of this period the second accused shall serve the last three (3) years on probation having taken into account his attitude and plea to be given a second chance and it is so ordered.

10. The accused persons have right of appeal on both conviction and sentence while the state has a right of appeal on sentence.

**DATED, DELIVERED and SIGNED at Nairobi this 22<sup>nd</sup> day of May 2018.**

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**J. WAKIAGA**

**JUDGE**

**In the presence of:-**

*Miss Wegulu for the State*

*Mr. Simaka for the 1<sup>st</sup> accused*

*Mr. Wakaba for the 2<sup>nd</sup> accused*

*Accused present*

*Court Assistant – Karwitha*