



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CRIMINAL DIVISION

CRIMINAL CASE NO. 73 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

JOHN KARARU WANGUI.....ACCUSED

SENTENCE

1. The convict was on 8/3/2018 found guilty and convicted on two counts of murder contrary to **Section 203 of the Penal Code**. The court is now called upon to determine a just, appropriate and adequate sentence taking into account the Supreme Court decision in **PETITION NO. 15 & 16 OF 2015** consolidated and reported in [2017] eKLR, where the court had this to say on **Section 204:-**

“[69] Consequently, we find that Section 204 of the Penal Code is inconsistent with the Constitution and invalid to the extent that it provides for the mandatory death sentence for murder. For the avoidance of doubt, this decision does not outlaw the death penalty, which is still applicable as a discretionary maximum punishment.”

2. Upon conviction in mitigation the convict through his Advocate Mr. Muchiri submitted that he was remorseful for his action which was committed when he was drunk with diminished responsibility. It was submitted that the same had been in custody since 2011 which should be taken into account. It was further submitted that the same had no previous convictions.

3. The State through Miss Wegulu submitted that the convict being a police officer had a duty to maintaining law and order for the citizens of Kenya and he did not embody that important duty. He acted irresponsibly. It was submitted that cases of misuse of firearms by the disciplined forces was on the rise and therefore sought a deterrence sentence to send a warning to the officers on the need to use their firearms responsibly.

4. In compliance with the Judiciary Sentencing Policy Guidelines the court ordered for Pre-sentencing Report in which it was stated that the victim’s relatives were not reached for purposes of Victim Impact Statement. It was stated that the convict was remorseful and stated that he did not intend to terminate the lives of the deceased. He stated that he was posted to North Pokot for a period of three (3) years and was one of the six (6) police officers who survived the Baragoi Massacre which impacted negatively on him and turned him into an alcoholic. He therefore sought non-custodial sentence which will offer him access to better counselling sessions towards positive behaviour change.

5. The objectives of sentencing as per the Judiciary of Kenya Sentencing Policy Guidelines number 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.**

6. In this case the circumstances leading to the commission of the offence were that the convict being a police officer had left his place of work and teamed up with his colleagues at a local club to have drinks. While at the bar a disagreement arose amongst them forcing the bouncer to throw them out. The convict then went to the AP camp and came back armed with a G3 Rifle, entered the bar and ordered everyone out before he started firing while he knew very well or ought to have known that there were people in the said pub. As a result of his actions, the deceased persons herein suffered fatal injuries.

7. The fact that the accused was a trained police officer who misused his firearm exposing very many innocent members of the public who were minding their own businesses at the said pub is an aggravating fact which the court must take into account. The court has further taken into account the fact that the victims must have suffered very painful death as the offender chased away anybody who might have offered help to them. The convict's action was not at the spur of the moment as he had time to go back to the camp collect the firearm which he used in the commission of the offence herein in a cold and calculated manner thereby making it an heinous offence.

8. I have weighed this against the accused claim that the commission of the offence is related to the incident which occurred to him during the Baragoi Massacre which allegedly led him to abandon service for eight (8) months due to trauma and hallucinations. Whereas this might be true, no evidence was tendered by the convict on this to enable the court come to a just conclusion on the same. I have however noted that during the period the convict was in custody, it has been reported that his conduct was good.

9. Balancing the rights of the accused and those of the victims who were two and having taken into account the circumstances under which the offence was committed, I have come to a conclusion that a deterrence sentence is the most adequate and appropriate one in the circumstances of this case so as to send a warning out that the society in general does not take misuse of firearms lightly. I have therefore come to the conclusion and hold that an imprisonment sentences of twenty five (25) years will be an adequate, appropriate and just sentence herein and it so ordered.

10. The convict shall be given credit for the pre-conviction detention period from 20/9/2011 to 8/3/2018 as period served under the provisions of **Section 233 (2)** of the **Criminal Procedure Code**.

11. The convict has a right of appeal on both conviction and sentence while the State has a right of appeal on sentence. It is hereby ordered.

DATED, DELIVERED and SIGNED at Nairobi this 28th day of June, 2018.

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J. WAKIAGA

JUDGE

In the presence of:-

Miss Wegulu for the State

Ms Igori for Wandugi for the accused

Accused present

Court Assistant – Karwitha