

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

HIGH COURT CRIMINAL CASE NO. 20 OF 2016

CONSOLIDATED WITH

HIGH COURT CRIMINAL CASE NO 21 OF 2016

REPUBLIC PROSECUTOR

VERSUS

NICHOLAS KIPKOECH 1ST ACCUSED

VICTOR CHERUIYOT ROTICH 2ND ACCUSED

SENTENCE

1. In my judgment in this matter dated 2nd May 2018, I found the 1st accused, Nicholas Kipkoech, guilty of the offence of murder contrary to section 203 as read with section 204 of the Penal Code. It was my finding that he had, on the 3rd day of June 2016, at Kapkitonyi sub-location in Chemamul Location, Kericho West sub-location, with malice aforethought, murdered Leonard Kiprotich Sang.
2. I accordingly directed that a social inquiry report be prepared in respect of the accused to assist this court in reaching an appropriate sentence of the accused. A report has been prepared by the Probation Service, Kericho, which is undated but was filed in court on 11th June 2018.
3. The report indicates that the accused is 24 years old and is married with three children. His family members allege that he is innocent, and that his co-accused had confessed to the murder of the deceased.
4. In his mitigation, the accused stated through his Counsel, Mr. Kiprono, that he was remorseful that a precious life, the life of his cousin, was lost in avoidable circumstances, which he attributes to intoxication from alcohol. He is a first offender with a young family, and he prayed for a non-custodial sentence so that he can have an opportunity to sit down with the family of the deceased and they can forgive each other.
5. I have considered the social inquiry report and the mitigation made on behalf of the accused. I note that the accused is a first offender and is remorseful about the death of the deceased, though he maintains his innocence. It is interesting also that in the social inquiry report, both the accused's relatives as well as those of the deceased maintain he is innocent, yet all the evidence before the court pointed to him as the perpetrator of the offence.
6. Be that as it may, this court found that on the evidence before it, the accused murdered the deceased with malice aforethought. Section 204 of the Penal Code provides that the penalty for murder is the death sentence. Pursuant to the decision in **Francis Karioko Muruatetu vs Republic Supreme Court Petition Nos. 15 and 16 of 2015**, this court has the discretion to consider the accused's mitigation and any extenuating circumstances, and pass a sentence other than death.
7. Given the circumstances of this case, the fact that the offence was committed in a bar while all the protagonists appear to have been drunk, and the fact that the accused is a young man and a first offender, I hereby sentence him to 20 years imprisonment.

Dated Delivered and Signed at Kericho this 14th day of June 2018.

MUMBI NGUGI

JUDGE