



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**CRIMINAL CASE NO. 74 OF 2011**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**REUBEN WAWERU MACHARIA.....ACCUSED**

**SENTENCE**

1. The Accused Person, Reuben Waweru Macharia, was convicted of the offence of murder *vide* a judgment dated 04/06/2018. He was found guilty of unlawfully, and with pre-meditation, killing Dorcas Muthoni Waweru on 04/10/2010 at Molo Township within Nakuru County. The Deceased was the Accused Person's estranged wife.
2. The Accused Person pleaded not guilty and a fully-fledged trial ensued leading to his conviction.
3. At the sentencing hearing, the State Counsel, Mr. Chigiti informed the Court that Accused Person is a first offender. However, he recommended that the Court should consider sentencing the Accused Person to life imprisonment in view of the circumstances of the murder: the Accused Person stabbed the Deceased before setting her on fire – showing his determination to kill her.
4. The family of the victim opted not to address the Court or file a Victim-Impact Statement.
5. Mr. Njogu, Counsel for the Accused Person, offered mitigation on behalf of the Accused Person. He told the Court that the Accused Person is remorseful; and that he is a first offender. Mr. Njogu pleaded that not a day goes by without the Accused Person regretting his actions; that the Accused Person has gone through a lot of psychological suffering. The Accused Person has three children and has been taking of them. Mr. Njogu asked the Court to consider non-custodial sentence.
6. I have carefully considered all the factors in his case on an individualized basis as I am required to do. I have considered the following three mitigating factors.
7. *First*, the Accused Person is a first offender.
8. *Second*, the Accused Person expressed remorse.
9. *Third*, I have also considered the fact that the Accused Person has a family that depends on him.
10. These mitigating factors must be balanced with aggravating circumstances to arrive at an appropriate sentence. First, I have considered that this murder involved a high degree of planning and heinous use of brutal violence: the Accused Person stabbed the Deceased no less than five times: several times on the head; on the left side of the breast; on the abdomen; and at least twice in the back. All these stab wounds were calculated to kill; but if this was not enough, the Accused Person poured petrol on the Deceased and set her on fire.
11. The Accused Person went to a Petrol Station; purchased the petrol; put it in a jerry can and planned for his attack. He then armed himself with a *panga* and a sword to ensure his plan will not fail. The attack did not happen spontaneously: it was well planned and it was executed with ruthless efficiency. He timed his attack to dusk to ensure that he would not be easily detected.
12. In addition to killing the Deceased, the Accused Person attacked the Deceased's uncle and badly injured him as part of his murderous spree. It also did not matter to the Accused Person that his children were in the same compound – including his last born baby who was hardly one year old at the time. His then thirteen years old daughter witnessed him stabbing her own mother and setting her ablaze and had to play a role no child should ever play: to rescue her sibling baby from the engulfing flames set up her own father.
13. There is no question that the circumstances of this murder are, indeed, aggravating. They call for a very stiff sentence to match the ruthlessness of the attack and its effect on the victims and the society. In this case, I have come to the conclusion that a custodial sentence is

merited as the only suitable way of expressing society's condemnation of the Accused Person's conduct or deter similar conduct in the future. Having considered all the mitigating circumstances and aggravating circumstances, I am of the view that a custodial sentence of thirty years is the appropriate sentence

**14. Consequently, in my view, a fit sentence that properly balances the mitigating circumstances with the aggravating circumstances is a sentence of thirty years imprisonment and I, accordingly, sentence the Accused Person to that period.**

15. Orders accordingly.

**Dated and Delivered at Nakuru this 8<sup>th</sup> day of August, 2018.**

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**JOEL NGUGI**

**JUDGE**