



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 4 OF 2018**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**HARUN NJAU KINYANJUL.....ACCUSED**

**JUDGEMENT**

1. Harun Njau Kinyanjui hereinafter the accused was brought before this court charged with an offence of Murder contrary to Section 203 of the Penal Code. He was alleged to have committed the offence on 15<sup>th</sup> December 2017 at Kimana Township in Loitoktok Sub-county within Kajiado County where he murdered Jane Wathoni Kimani hereinafter the deceased.

2. The accused pleaded not guilty to the charge compelling the prosecution to summon witnesses to discharge the burden of proof beyond reasonable doubt. At the trial, the accused was represented by Mr. Githuka Advocate, while the prosecution was led by the senior prosecution counsel Mr. Akula. The case for the prosecution is set out in detail by the nine witnesses summoned by the state.

**The Case for the Prosecution**

3. PW1 Mary Mwangeli Mulonzi testified on behalf of the prosecution that on 14<sup>th</sup> December 2017 as she was leaving her place of work Silent Bar at around 2. 45a.m heading home, she met the deceased and proceed to walk with her home as they lived within the same compound within Kimana Township where PW4 was the landlord. It was PW1's evidence that on reaching the gate to the compound shared with the deceased, she heard the accused asking the deceased why the deceased was interfering with his marriage and then she saw the accused stab the deceased. She further testified that she heard the deceased wail "Maria nimedungwa", she screamed for help and when it came she positively identified the accused as the person who had assaulted the deceased.

4. PW1 further testified that the deceased proceeded to her house awaiting to be taken to hospital while at the same time members of public descended on the accused. She went on to state that help was sought and deceased was rushed to Oloitoktok hospital while the accused was frog matched to the police station by the public who handed him over to officers from Kimana Patrol base who were on patrol.

5. PW2 Sgt Jeremiah Ngunjiri an Administrative police officer based at Kimana AP post testified that on 15<sup>th</sup> December 2017 in the early morning hours while on patrol he came upon the accused who had sustained bodily harm from the public on account of his actions towards the deceased. He testified that on observation he recommended that the accused be taken to hospital as he had injuries.

6. PW3 Peter Njoroge Kamau's case for the prosecution was that on the night of 14<sup>th</sup> going n 15<sup>th</sup> December 2017 he was informed of the attack on the deceased who at the time was his employee. He proceeded to the scene and on the road met a crowd with the accused on inquiry he was told the deceased was still at her house. By time of arriving at deceased residence the deceased had been taken to hospital.

7. PW4 Simon Ndungu Karo testified that he was the proprietor of the estate where the accused, PW1 and the deceased resided. He confirmed that the deceased was a tenant at House No. 5.

8. PW5 CPL Christopher Ekale a police detective testified that he was part of team that investigated the matter. He stated that his role was visiting the deceased at Oloitoktok hospital where he recorded the statement on the assailant. He confirmed that the incident between the accused and the deceased was originally treated as an assault before the deceased succumbed to her injuries then the incident was investigated as a murder.

9. PW6 Government Pathologist, Charles Mwenda Mutioya evidence was that he performed the postmortem on the body of the deceased the same having been identified to him by Samuel Mburu and Peter Mburu both brothers to deceased. He stated that he externally observed sutured stab wound at the left back. On his opinion he established the case of death being peritonitis secondary to penetrating stab injury to stomach and traverse colon.

10. PW7 Dr. Ayub Abdi testified on the treatment history of the deceased at Oloitoktok Hospital and subsequent referral to Makindu hospital. He confirmed the staff by name Kiria a nurse who was present at time of recording the statement of deceased which turned to be a dying declaration.

11. It was PW8 Peter Njoroge Chege's testimony that on the night of 14<sup>th</sup> going on 15<sup>th</sup> December 2017 while working as a bouncer at Silent Pub, he heard screams from PW1 seeking assistance as someone had stabbed another in their compound. He testified that he proceeded to the scene where he noted that the accused had been beaten by the public and on observation saw the deceased injured at the stomach and tied with a lesa to restrain bleeding. He testified that together with others they sought transportation for the deceased to hospital to seek medical care.

12. PW9 Mary Muthoni was the Investigating Officer in the incident. The gist of her testimony was that she conducted investigations which included visiting the scene and recording statements and compiled the file. She concluded that the deceased was with PW1 on the material night when the accused attacked her for claiming she was interfering with his marriage. She further established at the time the accused's wife was not living in the couple's house. She further stated that after the incident, DW2 the accused's wife, vacated the house and that the murder weapon was not traced. She further produced OB extracts in support of an earlier charge of assault prior to the death of deceased which the accused had pleaded to in the lower court.

### **The Case for the Accused**

13. At the close of the Prosecution's case, the accused was put on his defense. He elected to testify on his own behalf and also called upon DW2 Sarah Wanjiku Thumbi, his wife, as a witness.

14. It was the accused's case that on 14<sup>th</sup> December 2017, he was alone at his house as his wife had gone to visit friends. He cooked his meal and retired to bed only to be woke up in the wee hours of the night by knocks at his door and upon opening he met with PW1 who was in the company of 3 other men. It was his testimony that PW1 accused him of stabbing someone and as a result the public descended on him and he was only saved by the intervention of PW8 whereupon he was escorted to the police station and later reported to hospital to seek medical attention for the injuries he had sustained. The accused admitted to knowing the deceased meeting her on the material night or stabbing her at all.

### **Submissions on behalf of the accused**

15. Mr. Githuka argued on behalf of the accused that PW1, who was the only witness who directly witnessed the alleged murder, was not a credible witness as there were various inconsistencies in her testimony. According counsel the inconsistencies pointed toward the PW1 not being a straightforward person whose testimony could be relied on. On this line of argument, counsel cited the case of **Joseph Ndungu Kimanyi v Republic (1979) eKLR**.

16. Counsel went further to submit on perceived inconsistencies in the timelines as to when the deceased left her place of work and arrived at her residence as testified by PW3.

17. Mr. Githuka submitted that the dying declaration of the deceased was a mere fabrication meant to bolster the prosecution's case. It was posited that it could be inferred that the failure by the prosecution to call the nurse Kuria who witnessed the dying declaration was due to the fact that the testimony of nurse Kuria would have been adverse to the prosecution. Counsel cited the cases **James Omondi Were v Republic [2014] eKLR**, **Bukenya & Others vs Uganda (1972) EA 549** and **Beumazi Ndoro Chaila v R (2016) eKLR** in support of this argument.

18. Counsel argued in favour of the accused by stating that there was no murder weapon found nor were there any blood stained clothes owned by the deceased found yet both would have been easily obtainable had a search been conducted at the accused's house.

19. Advocate for the accused Mr. Githuka then proceeded to question the manner in which investigations had been conducted by PW5 and PW9 and submitted that they had not done a thorough investigation.

20. It was counsel's submission that the Prosecution had failed to discharge its burden of proof and that it was still uncertain as to who had stabbed the deceased. According to counsel, the accused had proffered an explanation as to the occurrences of the material night as far as he knew. The case of **Elizabeth Waithiigeni Gatimu v R(2013) eKLR** was cited.

### **Prosecution's Submissions on behalf of the state.**

21. Further to relying on the prosecution witnesses' testimonies, Mr. Meroka, principal prosecution counsel submitted that the accused and DW2 had both admitted to being familiar with the deceased as well as PW1 Mary Mwangeli as they all lived in the same plot. The prosecution therefore submitted that there was no case of mistaken identity as on the 14<sup>th</sup> December 2017 PW1 recognized the accused. It was further submitted that the compound in which the accused, DW2, PW1 and the deceased were tenants was well lit which enabled PW1 to positively recognize and point out the accused.

22. According to counsel, immediately after the alleged attack, PW1 raised the alarm and members of the public responded to the alarm. It was submitted that the immediacy of the events pointed to the clarity of memory and placed the accused at the scene of the crime immediately after the attack.

23. It was submitted that the testimony by DW2 on behalf of the accused ought to be disregarded as it was a futile attempt to engineer a different theory other than the one presented by the court. According to Counsel, DW2 was a wife trying to save her husband and was a stranger to the happenings of the material night.

24. The prosecution submitted that they had made a water tight case beyond reasonable doubt and the court ought to find the accused guilty of the murder of the deceased.

#### **Analysis and Determinations.**

25. The accused in this case was charged with the offence of committing murder contrary to Section 203 as read with Section 204 of the Penal Code. Section 203 of the penal code defines murder as the unlawful killing of a person or persons with malice aforethought.

26. In the case of **Republic Versus Andrew Omwenga 2009 eKLR** the court held:

**“It is clear from this definition that for an accused person to be convicted of murder, it must be proved that he caused the death of the deceased with malice aforethought by an unlawful act or omission – there are therefore three ingredients of murder which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are: (a) The death of the deceased and the cause of the death,**

**(b)That the accused committed the unlawful act which caused the death of the deceased and (c)That the accused had the malice aforethought”.**

27. Under Article 50 (2) (a) of the Constitution, there is always a presumption of the innocence of the deceased. As such, at all times the burden of proof in a criminal case remains with the prosecution. Under section 107 (1) of the Evidence Act, *“whoever desires any Court to give judgment as to any legal right or liability on the existence of facts which he asserts must prove those facts exists.”* For a conviction to be sustained, the prosecution must therefore prove beyond reasonable doubt that:

**a. The death of the deceased Jane Wathoni Kimani and her cause of death**

**b. That the accused Harun Njau Mwau committed the unlawful act which caused the death of the deceased and**

**c. That the accused had malice aforethought**

28. The standard of proof in a criminal matter has long been established to be that of beyond reasonable doubt. In the words of the indomitable Lord Denning in **Miller v Minister of Pensions [1947] 2 ALL ER 372 KB** :*“The degree is well settled. It need not reach certainty, but must carry a high degree of probability.”* Lord Denning went on to say:

**“proof beyond reasonable doubt does not mean proof beyond a shadow of doubt; the law would fail to protect the community if it admitted fanciful probabilities or possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility, in his favour which can be dismissed with a sentence of course it is possible but not in the least probable, then the case is proved beyond reasonable doubt.”**

29. From the foregoing, it is clear that it falls to this court to interrogate the evidence as proffered by both parties with a view of establishing whether the burden of proof has been adequately discharged by the prosecution.

30. I shall embark on discharging my duty by examining each element of the offence of murder as contained in the evidence offered by the prosecution.

#### **Death of the deceased, Jane Wathoni Kimani**

31. No dispute has been raised as to the death of the deceased. PW1 Mary Mwangeli Mulonzi testified that the deceased was stabbed with a knife. The body of the deceased was positively identified to PW6, Charles Mwenda Mutioya, the government pathologist by Samuel Mburu and Peter Mburu both brothers to deceased. PW7 Dr. Ayub Abdi testified on the treatment of the deceased at Oloitoktok Hospital and subsequently referral to Makindu Hospital. PW6 stated that he observed sutured stab wound at the left back and subsequently formed the opinion that the cause of death was peritonitis secondary to penetrating stab injury to stomach and transverse colon. This cause of death is consistent with the testimony of PW1.

32. The prosecution therefore has proved beyond reasonable doubt that the deceased person is dead.

#### **Whether the death of the deceased was unlawfully caused.**

33. Under Article 26 (1) of our constitution, *“every person has a right to life.”*

**“(3) A person shall not be deprived of life intentionally, except to the extent authorized by this constitution or other written law.”**

34. It is indeed trite that unless occurring under extenuating circumstances well established in law, every death caused by another person is otherwise unlawful. Directing itself to the question of unlawful death, this court in **Republic v Ismail Hussein Ibrahim Criminal Case 4 of 2016[2018] eKLR** had this to say:

**Under Article 26 (1) of the constitution, “Every person has the right to life. It is also stated in subsection (3) that a person shall not be deprived of life intentionally except to the extent authorized by this constitution or other written law.”**

*It is vital to note that from these provisions not all homicides are unlawful. As the principle in the case of Republic Versus Guzambizi S/o Wesonga 1948 15EACA 65 articulates Death is excusable by law in circumstances of reasonable defence to self, property, as a result of accident or misadventure or in protection of life or property of a third party.*

*In proving the cause of death section 213 of the penal code provides acts and circumstances which an inference as to death can be inferred by way of evidence to prove the cause of death. This was the holding in the case of Republic Versus Smith 1959 2ALLER 193 where the court held inter alia that: "If the victim's death is traceable to the injury inflicted by the accused it will avail him nothing to show that the deceased's death might have been prevented by proper care or treatment". That is why in our courts it is firmly established that proof of death and cause is by way of medical or circumstantial evidence. (See Benson Ngunyi Ndundu Versus Republic CACRA No. 171 of 1984).*

35. I will now turn to an examination of the unique circumstances. It was the testimony of PW3 Peter Njoroge that at the time of her death, the deceased was in his employment. It was further stated that on the fateful night of 14/15<sup>th</sup> December 2017, the deceased had left her place of work in the early hours of the morning for her residence. This establishes that by the time she was closing up from work, the deceased was still alive. PW1 Mary testified that she met up with the deceased on her way to the compound which they both shared and walked together. It was PW1's testimony that upon reaching the gate of the compound, she heard an altercation between the deceased and the accused where the accused was inquiring why the deceased was interfering with his marriage. Mary then testified that she saw the accused stab the deceased and heard the deceased scream "*Maria Nimedungwa*"

36. It is the prosecution's case that PW1 positively identified the accused as he was recognizable to her seeing as they lived within the same plot. The defence on the other hand sought to dispel the testimony of PW1 citing inconsistencies in her testimony. It was posited that PW1, who was the only person to directly witness the murder, was not a credible witness. The prosecution argued that the compound was well lit and the accused was known to both the deceased and PW1 who were as such capable of identification by recognition.

37. In the English decision in **R. v Turnbull (1976) 3 ALL ER 549** the court in dealing with the issue of identification by recognition set the following standard:

**"First, whenever the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition, he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken provided this is done in clear terms the judge need not use any particular words."**

38. In **Maitanyi V Republic [1986] KLR 198**, the Court of Appeal rehashed the standard set out in **R v Turnbull (supra)** as follows:

**"1. Although it is trite law that a fact may be proved by the testimony of a single witness, this does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification, especially when it is known that the conditions favouring a correct identification were difficult.**

**2. When testing the evidence of a single witness a careful inquiry ought to be made into the nature of the light available conditions and whether the witness was able to make a true impression and description.**

**3. The court must warn itself of the danger of relying on the evidence of a single identifying witness. It is not enough for the court to warn itself after making the decision, it must do so when the evidence is being considered and before decision is made.**

**4. Failure to undertake an inquiry of careful testing is an error of law and such evidence cannot safely support a conviction."**

39. When faced with the question of the credibility of the testimony of a single witness, the Court of Appeal in **Jevan Mwanjau & another v Republic Criminal Appeal 87 of 2014 [2015] eKLR** opined thus:

**"Under section 143 of the Evidence Act, in the absence of any provision of law to the contrary, no particular number of witnesses is required to prove a fact. It follows that there is no legal impediment in convicting on the sole testimony of a single witness. The time-honoured principle is that evidence has to be weighed and not counted, that is, whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise as opposed to whether there is a multiplicity or plurality of witnesses. It is therefore open to a competent court to fully rely on the evidence of a solitary witness and record a conviction. Conversely, it is equally true that the court may acquit a suspect in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The court must, however, where the evidence of a solitary witness relates to identification of a suspect in a criminal case, exercise extreme caution."**

40. The court in **Jevan Mwanjau (supra)** went on to list some of the considerations in weighing the evidence of a single witness to include:

**a. The lighting conditions under which the witness made his or her observation.**

**b. The distance between the witness and the suspect.**

- c. Whether the witness had an unobstructed view of the suspect.
- d. Whether the witness had opportunity to see and remember the facial features and clothing of the suspect.
- e. How long did the witness observe the suspect and which direction was the latter facing"
- f. Whether the witness gave a description of the suspect and whether it matched the suspect.
- g. The mental, physical and emotional state of the witness before, during and after the observation,
- h. Whether the witness ever saw the suspect prior to the occasion in question.

41. At this juncture, it is prudent that this court warns itself of the dangers of relying on a single identifying witness. That being said, upon due consideration of the evidence tendered by the prosecution, this court is satisfied that the lighting conditions that were prevalent on the material night coupled with the prior familiarity of the accused and PW1 are enough for the court to draw the inference that PW1 positively identified the accused by recognition.

42. Mr. Githaka submitting on behalf of the accused sought to punch holes in the timeline of occurrence of events as testified by the Prosecution witnesses. More specifically about the time PW1 and the deceased left their respective places of work and the time the alleged stabbing occurred. While there may be some truth to the defence's submission, this court finds that this does not disprove the fact that PW1 was able to positively identify the accused.

43. In the Addressing itself to the question of discrepancies and contradictions in the witness statements and testimonies, the Court in **Milton Kabulit & 4 others v Republic Criminal Appeal 340 of 2012 [2015] eKLR** cited the opinion of the court in **Joseph Maina Mwangi versus Republic Criminal Appeal No. 73 of 1993** where the court ruled that:

**“In any trial there are bound to be discrepancies. An appellate court in considering those discrepancies must be guided by the wording of section 382 of the Criminal Procedure Code whether such discrepancies are such as to cause prejudice to the appellant or they are inconsequential to the conviction and sentence”**

44. The Court in **Milton Kabulit (supra)** also cited **Njuki & 4 others versus Republic [2002] 1KLR 771** where the court stated that **“Where discrepancies in the evidence do not affect an otherwise proved case against an accused a court is entitled to ignore those discrepancies.”**

45. The accused only explanation as to his whereabouts was that he was asleep and completely unaware of the incident that occurred on the night of 14/15<sup>th</sup> December 2017. He denied seeing the deceased that night or stabbing her at all. This court is not satisfied with this explanation. The accused further alleges that he had a prior entanglement with PW1 which ended acrimoniously. It is the accused's explanation that whatever befell him on the material night was an orchestration of PW1 as retribution for his ending whatever relationship he had with her. This court finds this theory to be a stretch at best.

46. In my view the prosecution has discharged the onus of prove beyond reasonable doubt that the accused caused the death of the deceased by stabbing. I therefore find and hold that the prosecution has proved that the deceased death was unlawful.

#### **Malice aforethought**

47. Having determined that the deceased's death was unlawful, I next have to contend with the element of malice aforethought and I shall do so forthwith. Section 206 of the penal code provides for circumstances which if manifested in any a case malice aforethought is deemed to be established:

**“(a) an intention to cause death of or to do grievous harm to any person whether that person is the person actually netted or not**

**(b) Knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually netted or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused.**

**(c) An intent to commit a felony**

**(d) An intention by the act or omission to facilitate the fight or escape from custody of any person who has committed or attempted to commit a felony”.**

48. What constitutes malice aforethought is a matter that is well settled in law. Directing itself to this question, the Court of Appeal in **Bonaya Tutut Ipu and another versus Republic [2015] eKLR** had this to say:

**“Malice aforethought” is the mens rea for the offence of murder and it is the presence or absence of malice aforethought which is decisive in determining whether an unlawful killing amounts to murder or manslaughter. Whether or not malice aforethought is proved in any prosecution for murder depends on the peculiar facts of each case. (see Moris Aluoch versus**

Republic Cr. App. No.47 of 1996) where the court went further and drew inspiration from a persuasive authority in the case of Chesakit versus Uganda CR App. No.95 of 2004 wherein the Court of Appeal of Uganda held thus:-

**“In determining a charge of murder whether malice aforethought has been proved, the court must take into account factors such as the part of the body injured, the type of weapon used if any, the type of injuries inflicted upon the deceased and the subsequent conduct of the accused person.”**

49. Inspiration can also be drawn from **Rex versus Tubere S/O Ochen [1945] 12EACA63** wherein, it was ruled thus:

**“It (the court) has a duty to perform in considering the weapon used and the part of the body injured, in arriving at a conclusion as to whether malice aforethought has been established, and it will be obvious that ordinarily an inference of malice will flow more readily from the case, say of a spear or knife than from the use of a stick...”**

50. As far as the present case is concerned I have scrutinized in totality the evidence and the exhibits in support of the prosecution case against the accused. Immediately after the alleged attack, PW1 screamed for help and upon help arriving she pointed to the house of the accused where the accused had gone into hiding after stabbing the deceased. This conduct of the deceased in my view is sufficient to be termed as malice aforethought.

51. I am satisfied that there is direct and indirect evidence from the prosecution witnesses cogent and credible enough to place the accused positively at the scene of the crime.

52. The right to life is sacrosanct and is enshrined under Article 26(1) of the Constitution of Kenya. Every citizen has a duty and responsibility to respect, uphold and defend this constitution. This applies to the accused too with respect of the deceased's right to life.

53. Having conducted a detailed scrutiny of the evidence put forward by the prosecution through its nine witnesses, I have no doubt in my mind that the link in the evidence is such that it points to the guilt of the accused. Neither the accused's alternative theory nor the defense's spirited effort to discredit the testimony of PW1 have served to create a doubt in the mind of the court to draw an inference that the accused was positively identified as the perpetrator of the offence of murder against the deceased.

54. It is against this backdrop that I am satisfied and hereby do find that all the essential ingredients of the offence of murder contrary to section 203 as read with section 204 of the Penal Code have been proved beyond reasonable doubt by the prosecution.

55. In the upshot, I find the accused guilty of the charge of murder and do hereby convict him as per the law established under the provisions of section 203 of the Penal Code.

### **SENTENCE**

The accused person has been found guilty and convicted of murder contrary to Section 203 of the penal code. The facts are as clearly illustrated in the body of my judgement. The key highlights being the design and the plan hatched to kill the deceased by arming yourself with a lethal weapon. From the positive findings in the postmortem report you were determined to kill the deceased or cause grievous harm. The immediate aftermath response by members of the public to this incident, and in particular managed to effect arrest against you while the deceased was taken to Loitoktok Su-County Hospital but later referred to Makindu hospital for further specialized treatment. The injuries you inflicted on the fateful day occasioned her to succumb to death on 20<sup>th</sup> December, 2017.

### **Motivation**

From the history of Pw1 there is cogent evidence that the driving force behind the murder had something to do with your wife which might have created a deep hatred for the deceased and your desire to teach her a permanent lesson.

### **Mitigation**

According to the prosecution you do not have any previous convictions. The presentence report indicates your age to be 31 years, married and blessed with two children of tender age. The personal antecedents and character portrays you as a responsible and hard working person. Mr. Githuka relied on these specific aspects to submit on mitigation though he made it clear that you still deny the offence despite the verdict of this court.

### **Victim impact**

The father of the deceased John Kimani Mbulo gave moving victim impact statement on the pain the death of their daughter has occasioned the family members. He pointed out to the court about the family meeting held aimed at initiating victim offender mediation. However, it remains an ongoing process with no definite outcome.

### **Aggravating factors**

This incident was well orchestrated against a person well known to you. There was detailed mapping as to the place, time, target and execution of the plan to assault the deceased. It was significant that by good luck the deceased while walking home she was in company of Mary Mwangeli. The use of a lethal weapon and part of the body inflicted with harm exposed the deceased to the risk of grievous harm and subsequent death. There is no doubt this was a dangerous act which prematurely terminated the life of a young lady yet to pursue her life

time dreams. The protection of the right to life under Article 26 of the constitution is a duty for every citizen and not a reserve of the state. By killing the deceased intentionally you violated the constitution.

The nature of the sentence under the penal code under which you have been convicted flows from the Landmark by the Supreme Court in the case of **Francis Kanoki Muruatetu ECLR (2017)** in which the court reviewed the constitutionality, the penal code provisions and past decisions on the mandatory death penalty as prescribed by parliament. The court held interalia that the mandatory nature of the death sentence as provided for under Section 204 of the penal code is constitutional. This therefore left the death penalty to be part of our criminal justice sentences but at the discretion of the trial court depending on the circumstances of each case.

In the instant case I have taken into account the aggravating factors, the mitigation, the presentence report and the victim impact statement. All these dissuade me from imposing the death penalty. On my part I am satisfied that rendering long custodial sentence would serve two aspects to punish a serious crime of this nature where the right to life was violated and secondly, justice to the victims. I consider this process of sentencing an offender to be a solemn moment for every trial Judge given the complexity while exercising judicial discretion to come up with an appropriate figure or term of imprisonment. In so far as this case is concerned I consider a term imprisonment of 16 years to be appropriate sentence against you for this offence.

14 days right of appeal explained.

**Dated, signed and delivered in open court at Kajiado this 27<sup>th</sup> Day of September, 2018.**

.....

**R. NYAKUNDI**

**JUDGE**

In the presence of:

Mr. Githuka for the accused

Mr. Meroka for the DPP