



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

HCR NO. 4 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

RONALD KIPKOECH BII.....ACCUSED

RULING ON SENTENCE

1. In my judgment in this matter dated 13th June 2018, I found the accused, Ronald Kipkoech Bii, 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, with malice aforethought, on the 16th day of February 2015, at Getarwet Village within Kericho County, murdered Mercy Cheron. Section 204 of the Penal Code provides that the penalty for the offence of murder is the death sentence.

2. In its decision in **Francis Karioko Muruatetu & another v Republic [2017] eKLR**, the Supreme Court found that the mandatory death sentence provided for murder under section 204 of the Penal Code is unconstitutional. However, it expressly stated that the finding did not disturb the validity of the death penalty, which is constitutional in accordance with section 26 (3) of the Constitution. The finding of the Court, put differently, is that while the death penalty is not *per se* unconstitutional, imposing the death sentence without considering mitigating factors or extenuating circumstances violates the right to a fair trial guaranteed under Article 50 (2) of the Constitution. This gives the Court, where the penalty provided for an offence is the death sentence, the discretion to consider mitigating factors in determining what sentence to pass. The court is not bound to impose the death penalty, but neither is it precluded from passing the death penalty should the circumstances so demand.

3. The Supreme Court varied the **Sentencing Policy Guidelines** promulgated by the Judiciary in 2016 and provided the following guidelines with regard to mitigating factors that are applicable in a re-hearing sentence for the conviction on a murder charge. I believe that these factors are applicable in circumstances such as are before me. These factors are:

- (a) *The age of the offender;***
- (b) *Being a first offender;***
- (c) *Whether the offender pleaded guilty;***
- (d) *Character and record of the offender;***
- (e) *Commission of the offence in response to gender-based violence;***
- (f) *Remorsefulness of the offender;***
- (g) *The possibility of reform and social re-adaptation of the offender;***
- (h) *Any other factor that the Court considers relevant.***

4. The state indicated that it did not have any records pertaining to the accused, and he may be treated as a first offender.

5. In his mitigation through his Learned Counsel, Ms. Koech, the accused stated that he was remorseful for the death of the deceased. He was 50 years of age, was unwell, had diabetes and was on anti-retroviral medication. He had been taking care of his elderly mother, and was praying for a non-custodial sentence so that he can go back and continue with that responsibility. He also was hoping to marry and have a

family which he had not been able to do with the deceased.

6. A social inquiry report dated 4th July 2018 was prepared by the Probation Services Office in Kericho. It paints a picture of a 50 year old man whom nobody, including his own mother, has anything good to say about. He has four children whom he has never taken care of, having chased away his first family more than two decades ago. He had been living with the deceased for only four months prior to her murder. His mother stated that the accused had killed his wife, whom he had cohabited with for only three months. She stated that he had beaten her from 2.00. p.m. on the material day, but no-one could rescue her as he threatened them with a panga. She describes her son as a person with no human heart who had at one point assaulted his own father. Similar sentiments are expressed by his sister in law who, like his mother, prays that he should not be given a non-custodial sentence.

7. I have considered the mitigation offered by the accused and the sentiments expressed in the social inquiry report against the evidence that was presented by the prosecution. Contrary to his self-portrayal as a remorseful person who is ailing and deserving of the mercy of the court, he is a vicious abuser of women, whose own mother, who, according to the social inquiry report, saw viciously assaulting the deceased, describes as having no human heart. He assaulted his wife mercilessly, broke two sticks which he was using to beat her, then took her to the house and then strangled her.

8. From the evidence, the accused assaulted and murdered his wife because of the relationship he had with her, that she was a woman, his wife, whom he was probably in the habit of abusing in the short period they were together. This brings into play the element of gender-based violence, one of the factors that the Supreme Court indicated should be considered in determining whether or not to impose the death penalty.

9. The accused in this case, in my view, deserves a very severe penalty. The severest penalty provided by section 204 of the Penalty Code for murder, which the Supreme Court has held to be constitutional, is the death penalty. It has been argued that resort should not be had to an eye for an eye vengeance in sentencing on a conviction for murder, but there are instances in which the penalty that is appropriate is the ultimate penalty. The accused in this case spent hours thrashing the deceased, heedless of her cries and those of his family members, who tried to restrain him, but whom he threatened with a panga. Not content with the thrashing, he carried the deceased into his house, and throttled the life out of her. She was an object, dispensable, to be tortured and killed. I find that this is one such instance where the death penalty is appropriate.

10. I accordingly sentence the accused to suffer death for the murder of Mercy Cheronu as prescribed by law. He has a right of appeal against conviction and sentence within 14 days of today.

Dated, Delivered and Signed at Kericho this 25th day of September 2018.

MUMBI NGUGI

JUDGE