



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CRIMINAL CASE NO. 46 OF 2014

(Formerly Kisii High Court Criminal Case No. 96 of 2013)

REPUBLIC.....PROSECUTOR

-versus-

- 1. DAVID OCHIENG AJWANG alias DAUDI**
- 2. ERIC OTIENO OJWANG alias FORD**
- 3. NICHOLAS OTUNGA OTIENO alias ONEKO**
- 4. BERNARD SAMUEL MBOYA alias BERNARD HUSSEIN**
- 5. DANIEL OWINO OGANYO**
- 6. JULIUS MAKAMBO OBADE**
- 7. KENNEDY KISA OMWERI**
- 8. JULIUS OTIENO DEYA alias OGENDO**
- 9. JANES OGALO OKETCH OLENDU**
- 10. JOSEPH ODHIAMBO MAJIWA alias JOSY**
- 11. JOSEPH KEYA OMWERI**
- 12. PAUL.....ACCUSED**

SENTENCE

1. The above twelve accused persons were jointly charged with three counts of murder. They all denied the informations and a trial was conducted which culminated with ten accused persons convicted on each of three counts of murder. They were sentenced to suffer death on 03/05/2017.

2. The accused persons thereafter petitioned the mandatory nature of the death sentence vide **Migori High Court Constitutional Petitions No. 3 and 5 of 2018** which Petitions were allowed and the death sentences set-aside. This Court then conducted fresh sentencing proceedings culminating with this sentence.

3. The accused persons tendered their mitigations and pleaded for non-custodial sentences or a short custodial sentences. Various reasons were tendered from how their families were suffering, how some were ailing in prison to having learnt life lessons while behind bars and pledged to be ambassadors of peace once released.

4. The prosecution opposed the pleas for either non-custodial sentences or a short custodial sentences and prayed for stiffer penalties in view of the way the murders were executed. That, from the evidence the families of the deceased were suffering more than those of the accused persons as the deceased were their families' sole bread winners and given that none of the accused persons offered any support to the families of the deceased. That, the accused were so selfish and do not deserve any leniency. That, as the accused persons have been in prison for about two years it will be dangerous and further traumatic to the families of the deceased if the accused persons were to be released. The

prosecution called upon the Court to balance the interests of both sides and note that none of the accused persons produced reports on their alleged reformation.

5. This Court has carefully weighed the mitigations and the submissions. The Court has also perused the Pre-Sentence Reports whose contents and recommendations for non-custodial sentences are duly noted. The judgment captured the unique circumstances of the case and the role played by each of the accused persons as part of a mob. The deceased were innocent citizens who were going about their lawful duties who readily explained their presence in the area and pleaded with the accused persons who were part of the mob which alleged that the deceased were cattle rustlers. The mob refused to listen to the explanations and although they had the opportunity of escorting the deceased to the police they threw such caution out of the window. They could not even heed the request of the local administrators not to take the law into their hands. That resulted with the death of innocent Kenyans.

6. Whereas the accused persons prayed for leniency on one hand, the families of the deceased on the other hand are yet to come to terms with the murders of the deceased. The families were rendered hopeless as captured in the Reports. This Court notes that as at now no reconciliation has been initiated by any of the families of the accused persons.

7. In balancing the interests of each side and the scales of justice this Court is of the considered view that none of the accused persons is deserving of any leniency. The murders were so heinously executed and that must be considered in sentencing. Having taken all relevant factors into account this Court hereby sentences each of the accused persons who were duly convicted to suffer death.

8. Those are the orders of this Court.

DELIVERED, DATED and SIGNED at MIGORI this 22nd day of October 2018.

A. C. MRIMA

JUDGE