



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAJIADO**  
**CRIMINAL CASE NO. 43 OF 2015**  
**REPUBLIC.....PROSECUTOR**  
**VERSUS**  
**NARU OLE SAGUDA.....RESPONDENT**  
**SENTENCE/VERDICT**

**NARU OLE SAGUDA** you were convicted with the offence of murder contrary to section 203 of the Penal Code Cap 63 of the Laws of Kenya. The brief circumstances of the offence as narrated by the prosecution were that you had been living together as husband and wife, the deceased in this case. On the material day you spent most of the time together including a visit to Ngong town. It was on your way back home you met PW8 a neighbour who accompanied you as you walked home. It was after you parted ways on or about 2.00pm on 19/1/2015 in the day you attacked and wounded Nkatha – the deceased who sustained instant fatal injuries.

It is against this background, I sentence you with the offence of murdering the deceased. The defence counsel Mr. Ochieng on behalf of Mr. Saenyi submitted on mitigation that you regret the offence and you are remorseful for having committed the crime against the deceased. The prosecution counsel Mr. Akula submitted that you have no previous record or any antecedent relevant to the instant conviction. Mr. Akula asked me to consider the seriousness of the offence as I exercise discretion in sentencing. Mr. Akula further urged this court to find that you do not seem to regret the offence as the social inquiry report by the probation indicates otherwise about your continual denial. The victim impact statement was not available as previous communication and notice went unanswered for them to attend and participate in the sentencing hearing.

I have considered the mitigating factors that you are remorseful for committing the offence. In addition you have no previous convictions. I therefore treat you as a first offender. I must also consider the attached pre-sentence report regarding your personal and family life. The community at Nalepo where you stayed with the deceased are still traumatized with the brutal murder of the deceased. I have considered the purpose of punishment in our criminal law which constitutes deterrence, preventive, community protection, retribution, rehabilitation and denunciation. These objectives would run through the decision on sentence in this case.

In making a determination I refer to where the principle of punishment in criminal law was discussed. In a persuasive authority in the case of **State v Sparks [1972] 3 SA 306 at 410** the Court of Appeal in Sychelles held:

**“That punishment should be fit to the criminal as well as the crime, be fair to the state and to the accused and be blended with a measure of mercy.”**

In Kenya the seriousness of the crime of murder and the death penalty has been considered in the case of **Joseph Njuguna Mwaura & Others v Republic Cr. Appeal No. 5 of 2008 [2013] eKLR**. The principle in this case as held by the Court of Appeal death penalty is a mandatory sentence for the offence like the one you were convicted of contrary to section 203 of the Penal Code. I remind myself of the guidelines given by the court in **Joseph Njuguna Case** since this is an offence of murder in terms of section 203 as read with section 204 of the Penal Code. This court has little room to navigate by way of exercising discretion. As a result the options are limited in imposing the death penalty under section 204 of the Penal Code. I therefore sentence you to suffer death as per the law established.

You have 14 days right of appeal to the Court of Appeal.

Before i lift my pen i would like to thank Mr. Saenyi the defence counsel and Mr. Akula, the senior prosecution counsel for their efforts during the trial of this case in which they have given their best.

**Dated, delivered and signed in open court at Kajiado on 29th day of March, 2017**

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**R. NYAKUNDI**

**JUDGE**

**In the presence of:**

Accused present

Mr. Ochieng for Saenyi for accused

Mr. Akula Senior Prosecution Counsel - present

Mr. Mateli Court Assistant - present