



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAJIADO
CRIMINAL CASE NO. 19 OF 2015

REPUBLIC.....PROSECUTOR

Versus

DAVID MUNYUI CHARAGU.....1ST ACCUSED

SAMUEL MUNGA NG'ANG'A.....2ND ACCUSED

SENTENCE REMARKS AND VERDICT

The accused persons David Munyui Charagu and Samuel Munga Ng'ang'a through an indictment under section 203 as read with section 204 of the Penal Code have been found guilty, and convicted of the offence of murder involving one Catherine Kanini Muiwa. The court relied on the evidence of the eight witnesses summoned by the prosecution to shade light on the crime either directly or indirectly as to how the deceased met her death between the night of 25th/26th January 2014.

According to the postmortem report the deceased sustained severe injuries to the spinal colim/and the cord where there was extensive fracture and severance of the spine. What can be implied from the injury is one which could be associated with bone fracture due to severe degree of force on the part of the assailant. The assailants were confirmed from the evidence adduced to be the two accused persons. The deceased was not only lured from her house but also dumped in the bush where a good Samaritan stamped on her body. The accused therefore in causing death did so with the intention of even ensuring that her body would not be recovered while in a good state of positive identification. That is why the accused culpability fell directly under the provisions of section 203 of the Penal Code.

The court called for pre-sentence report. According to the reports the accused persons appeared to have led normal lives. The 1st accused is a married man with four children while the 2nd accused is also a family man blessed with three children. In both instances the children of the accused persons are young and school going at primary and secondary school level but at different stages.

It is clear from the report and the senior prosecution counsel Mr. Akula that the two accused persons have no previous criminal record. The family of the 2nd accused alluded to the existence of a relationship between him and the deceased. The defence counsel Mr. Nyaata submitted on mitigation that the accused persons are remorseful for commission of the offence which the court found them guilty and convicted them accordingly.

In this case I have considered the remarks by Nyaata, learned counsel for the accused on mitigation, the remarks by Mr. Akula senior prosecution counsel for the state regarding the relevant provisions of

criminal law and punishment. I have had careful regard to the sentencing principles as outlined in the Sentencing Policy of the Judiciary 2016. I am also alive to the aggravating features of the offence under section 203 of the Penal Code, in this section the prescribed punishment for an offender found guilty and convicted faces the one and only sentence of death.

Despite the existence of mitigating factors and the pre-sentence report being favourable to the accused, this court's discretion in sentencing is limited by statute that offence which I am required to pass sentence is one of murder attracting a death penalty. That is the sentence I pass against each one of you that you suffer death as provided under section 204 of the Penal Code for causing the death of the deceased (Catherine Kanini Muiwa). Accordingly you have 14 days right of appeal to the Court of Appeal.

It is so ordered.

I am grateful to Mr. Nyaata the learned counsel for the accused and Mr. Akula, the senior prosecution counsel for state for the putting this together since the trial began.

ISSUED by me on this 24th day of March, 2017 under my seal and hand at Kajjado.

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R. NYAKUNDI

JUDGE

In the presence of:

Mr. Nyaata for the accused persons

Accused persons present

Mr. Akula for Director of Public Prosecutions

Mr. Mateli Court Assistant