



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NUMBER 23 OF 2012**

**REPUBLIC OF KENYA.....PROSECUTOR**

**VERSUS**

**BRIAN KIRWA BOWEN .....ACCUSED**

**SENTENSING**

The accused, Brian Kirwa Bowen was on the 2<sup>nd</sup> June 2016 found guilty of the offence of Murder Contrary to **Section 203** as read with **Section 204 of the Penal Code Chapter 63 Laws of Kenya.**

In his mitigation by his Advocate Peter Chege the court was urged that the accused was remorseful and did not intend to commit the offence against his only brother but which the court found otherwise.

The Advocate urged the court that there is a spirited clamour by the people of Kenya for the abolition of the mandatory death sentence the only penalty prescribed under the laws of Kenya for the offence of Murder.

**Section 204 of the Penal Code** states:

**“Any person convicted of murder shall be sentenced to death.”**

The death sentence is the only sentence prescribed under the law and is mandatory.

The court agrees with the accused's Advocate that there has been a spirited clamour for the abolishment of the death sentence and that no such sentence has been effected since 1987.

A three judge bench of the High court in **Jackson Maina Wangui -vs- Republic (2014) e KLR in Criminal Case No. 35 of 2015** faced with questions of the constitutionality and the curtailment of Judges discretion in sentencing rendered themselves that until such a time that the people of Kenya through legislation by parliament abolishes such sentence, it remains constitutional and legal as is currently prescribed, and that a court cannot pass any other sentence than the mandatory death sentence in convicting an accused person in respect of the offence of murder. Until such time that the law is abolished and/or amended to give a Judge discretion, my hands are tied.

I therefore proceed to sentence the accused to suffer the mandatory death sentence as by the law provided.

**COURT:** Right of appeal within 30 days has been explained to the accused person.

**Dated, Signed and Delivered this 27<sup>th</sup> Day of April 2017.**

**J.N. MULWA**

**JUDGE**