

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAJIADO
CRIMINAL CASE NO. 16 OF 2015

REPUBLIC.....PROSECUTOR

Versus

GEORGE NDUNGU MWANGI.....ACCUSED

SENTENCE REMARKS AND VERDICT

George Ndungu Mwangi, you were convicted of the offence of murder contrary to section 203 of the Penal Code punishable under section 204 of the same code. The brief facts disclosed by the prosecution were that prior to Nkuruna Kasatwa's death he was your supervisor in a farm where you worked as a charcoal burner. The evidence also revealed that you lived together in the same house while the deceased was away from his family home.

This fatal day on 6/11/2014 was just like any other day for both of you when in the early hours of the day you visited the deceased home. In your short visit you and the deceased also left together. The next time the relatives of the deceased heard of him was when you reported to PW1 that he has suffered serious burns and required medical treatment. The arrangements were made to take the deceased to the hospital where unfortunately he succumbed to death due to the injuries incurred on 10/11/2014. As a recital of the findings of the pathologist the extensive and serious burns were consistent with the cause of death.

I now proceed to sentence you. The pre-sentence report indicates that you are middle aged at 45 years in a family of 13 siblings. The family and the community interviewed gave a favourable report on your character and hard work to generate financial resources to support yourself and family. The victim impact statement alluded by a brother to the deceased one Kezwe Nkuruna. To them the deceased was a brother, husband and companion to many. During his life time the deceased who was aged about 56 years was married and blessed with eight children. Their concern was that the loss caused by your actions has left a gap which will not be filled more specifically loss of dependency for his family. In mitigation Mr. Sekento your advocate submitted on your behalf that you did not intend to kill the deceased whom you enjoyed cordial relationship.

On the part of Mr. Alex for the state you have no previous criminal record and hence you should be treated as a first offender. Before passing sentence I reiterate the fundamental principles of sentencing. I have in mind the sentencing guidelines launched by the judiciary to assist the judges/magistrates while exercising discretion on sentence. I consider the following three to be fundamental; the principle of proportionality. This principle encompasses seriousness of the crime, the need for just punishment, deterrence and where appropriate the need to protect the public and the victim. The sentence should be crafted to enable rehabilitation/reformation of the offender. Thirdly in passing the sentence it should be borne in mind no sentence should be greater than necessary which I prefer to call harsh and excessive in exercising discretion. In the present case I will bear this in mind.

I have taken into account that you are a first offender and also the mitigation of being remorseful of committing the offence. However I note that the offence of which you were convicted provides for a mandatory sentence of death penalty under section 204 of the Penal Code. The mandatory sentence does reflect the legislative intent to limit judicial discretion for serious offences like the one you were found guilty and convicted. There are no exceptional circumstances to make me depart from passing the mandatory sentence.

I do also find that some of the principles of sentencing run in contrast with the mandatory sentences but that as it may be death sentence is constitutional and lawful sentence in our country. That is the sentence I pass for this offence that you suffer death as provided for under section 204 of the Penal Code for the offence of murder contrary to section 203 of the same code.

Dated, delivered and signed in open court at Kajiado on 21st day of April, 2017.

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R. NYAKUNDI

JUDGE

In the presence of:

Mr. Sekento for accused present

Mr. Akula for Director of Public Prosecutions present

Mr. Mateli Court Assistant

Accused present