



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL CASE NO. 26 OF 2015

REPUBLIC.....PROSECUTOR

Versus

1. SAMUEL KILELE MUSEMBI

2. BONIFACE MAKAU PETER.....ACCUSED

SENTENCING REMARKS AND VERDICT

Samuel Kilele Musembi and Boniface Makau Peter you have been jointly convicted with the offence of murder contrary to section 203 of the Penal Code.

APPLICABLE LAW:

The Constitution of the Republic provides for sanctity of life under Article 26 (1) which provides:

“Every person has a right to life.”

Section 26 (3):

“A person shall not be deprived of life intentionally except to the extent authorized by this constitution or other written law.”

That there mandates every person within our borders to respect the right to life of another human being. Article 10 (2) of the Constitution sets out the rule of law, human dignity, equity, social justice, inclusiveness, equality, human rights, non discrimination, good governance, integrity, transparency and accountability as national values and principles of governance.

In decision making a state officer is bound to espouse the principles in Article 10 of the Constitution. The Kenyan people on enacting the Constitution 2010 aspire for a crime free society where security, peace, law and order is guaranteed. That responsibility is for every Kenyan.

Section 24 of the Penal Code provides for a range of penal punishments/sanctions that are provided for trial courts to order to be served by an offender after due process of law. One such sentence is the death penalty. The constitution itself recognizes the death penalty as lawful. The offence which is a subject of this hearing is a serious violent crime as specified under section 203 as read with section 204 of the Penal Code. Parliament has provided for the death penalty for causing death of another human being.

In this case I have considered the mitigation as submitted on your behalf by Mr. Sekento and Mr. Nyaata the defence counsels. Both counsels highlighted that each one of you is remorseful and regrets the

offence. Mr. Akula learned counsel for the state submitted that you have no previous records. These mitigating factors placed before me in your favour sound like every day factors to each case with different circumstances.

I have taken into account all these. I bear in mind the circumstances in which death occurred to the victim of this offence you were convicted of jointly as having participated.

I am satisfied on the legal position as enunciated in the case of **Joseph Njuguna Mwaura & Others v Republic Cr. Appeal No. 5 of 2008 [2013] eKLR** where it was emphasized that the death penalty cannot be substituted by any other punishment. I associate myself with the decision of this case in matters of offences under section 203 of the Penal Code. in the entire trial it never emerged what your motive was for killing the deceased whom you associated and acquainted with prior to her death. The fact that you are young people, with no previous convictions provides little mitigation in a serious crime of this nature where life of the deceased was prematurely terminated.

I have referred to the decision of the Court of Appeal in **Johanna Ndungu Case (Supra)**. The sentence I pass against you is one provided for under section 204 of the Penal Code that each one of you suffer death as per law established. 14 days right of appeal explained.

Dated, delivered in open court at Kajiado on 18th day of May, 2017.

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R. NYAKUNDI

JUDGE

In the presence of:

Mr. Sekento for the 1st accused

Mr. Nyaata for Mr. Morara the 2nd accused

Mr. Akula for Director of Public Prosecutions

Accused 1 & 2

Mr. Leonard Court Assistant