



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL CASE NO. 25 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

BRIAN MOISASI MOPIA.....ACCUSED

SENTENCING REMARKS/VERDICT

BRIAN MOISASI, after a long trial this court entered a verdict of guilty and convicted you with the offence of murder contrary to section 203 punishable under section 204 of the Penal Code. This is a case which involved your late father Moses Moisasi.

In order to achieve the outcome evidence revealed the planning which took place prior to the death of Moses Moisasi. The day of carrying out the killing you were seen in company of two other people who accompanied you to the Moses Moisasi house seeking to hire his land rover. On the day of the murder two of you were in a bar when you met some hours in advance. When you went to the Moses Moisasi house you were to await for him to be woken up so that he can receive the brief why you wanted to speak to him.

There was no evidence that the deceased had done absolutely nothing deserve what he went through in the night of 18/4/2013. As it has been stated from the moving testimony of your mother, the consequences of the murder and its effect has had a severe and last impact on those close to the deceased. The deceased was the head of the family and a companion, husband, father, uncle to many. The prosecution equally has asserted that you have no previous record. Mr. Sekento senior learned counsel similarly has offered mitigation and urged this court to consider non-custodial sentence. This is also in line with the presentence report.

I have carefully and anxiously considered the mitigation by Mr. Sekento, the victim impact statement and the remarks by the prosecution counsel. In my view this is a serious offence which parliament prescribed the death penalty. The sanctity of life under Article 26 of the Constitution must be protected and one of the way of doing it is by meeting out an appropriate sentence as prescribed in the Penal Code for each offence. As the law stands Section 204 of our Code providing for the death penalty is not in contravention of the constitution.

Upon review of the evidence, the mitigation by learned counsel on behalf of the accused and the victim impact statement by your mother and the presentence report; must bear in mind the following:

1. Aggravating factors:

The factors in this case establish the following:

That the death of your father **Moses Moisasi Kiparki** was a murder committed in a cold, planned, premeditated and executed with precision without any pretence of moral or legal justification.

The facts of the case prove how you urged a chilling plan to commit the murder for what i would say was purely for personal gain. On the fateful day you exploited your father – son relationship to lure him to the death trap which was about 30kms from your home. You made your father believe that there were people who genuinely required help for their vehicle to be towed to a safe place.

In the actual killing at the scene you decided to dismember him by inflicting deep cuts on his head, upper and lower limbs. You used a sharp sword and a block of stone to maim your father permanently. The remains of your father were discovered by the villagers in the following morning who in turn contacted the police and other family members.

The emotional and moving victim impact statement by your mother on behalf of the family was heart breaking. The contents of the statement touching on the loss of the husband, provider, father to her children made it clear the terrible loss and impact occasioned and suffered such his death. The family is still grieving on account of what your mother stated. She was afraid of losing another member of the family through this court process.

I take cognizance of the fact that serious case of this nature has devastating effect to the families as a whole. It is incomprehensible to a family when suddenly without justification a life is lost as a result of a wrongful act from one of their own as the assailant. The psycho traumatic effect is profound and everlasting specifically when loved ones are involved as it is the case here. You hired and paid the accomplices.

I have heard and taken note the mitigation, the remarks by the prosecution counsel, the moving victim impact statement and the presentence reports. Based on the evidence placed before me during this trial i am satisfied that you were in control of your mental faculties when you planned to kill your father.

The aggravating factors particularized in this ruling is therefore given greater weight that the mitigation and presentence report. In fact this court attaches no probative value to your mitigation because of your attitude of still living in self-denial. You have not shown empathy for the feeling of sorrow for this unfortunate incident.

In the light of the recent decision of the Court of Appeal **Joseph Njuguna Mwaura & Others v Republic Cr. Appeal No. 5 of 2008 [2013] eKLR** it is not open to me to impose an alternative sentence in the event one has been found guilty and convicted of murder.

The determination of the sentence must reflect the violent nature against the victim as one of the aggravating factors. I will therefore proceed to sentence the accused to suffer death as provided for under section 204 of the Penal Code.

14 days right of appeal explained.

Dated, signed and delivered in open court at Kajiado on 25th day of August, 2017.

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R. NYAKUNDI

JUDGE

Representation:

Accused present

Mr. Sekento for the accused present

Mr. Akula for Director of Public Prosecutions present

Mr. Leonard Court Assistant - Interpreter