



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
HIGH COURT CRIMINAL CASE NO. 24 OF 2010

REPUBLICPROSECUTION

VERSUS

- 1. BEATRICE MUSIMBI.....1ST ACCUSED**
- 2. DICKSON MULIMA.....2ND ACCUSED**
- 3. GEORGE WAFULA3RD ACCUSED**

SENTENCE

1. The convict **BEATRICE MUSIMBI**, was charged together with **DICKSON MULIMA** and **GEORGE WAFULA** with the offence of murder contrary to Section 203 as Read with Section 204 of the Penal Code of **LUZ HINES ROUFFAER** her then employer between 23rd and 25th of April, 2010 for which they pleaded not guilty.

2. Their trial commenced before Justice N.R.O Ombija who heard the evidence of all the prosecution witnesses and put the accused persons on their defence before retiring from the Judiciary. This matter was thereafter placed before me for defence hearing upon compliance with Sections 200 and 201 (1) of Criminal Procedure Code and therefore had no advantage of seeing and hearing the prosecution witnesses.

3. At the close of the defence case the convict was found guilty and convicted of the murder of the deceased based upon the circumstantial evidence tendered and recorded by Justice Ombija and analyzed by the court while her co-accused were acquitted.

4. In compliance with Section 216 of the Criminal Procedure Code which provides that:-

“The court may before passing sentence or making any order against an accused person under Section 215 receive such evidence as it thinks fit in order to inform itself as to the sentence order properly to be passed or made.”

and in compliance with the Judiciary Sentencing Policy Guidelines 23, the court ordered for a pre-sentencing report which has now been submitted.

5. In the said report the following issues stands out:-

- The accused is a mother of three adult children.

- Though convicted she still denies having committed the offence and states that the deceased must have had company in the house on the material day based on her conduct of allegedly making two cups of tea and denying her entry to the bedroom

- She states that the blood found on her dress linking her with the offence must have been smeared by the investigating officer to frame her.

- On victim impact statement; The husband of the deceased stated that the father of the deceased died three years ago following a shock as a result of the death of the deceased.

- He believes that the accused could not have committed the offence herself and may have just been an accomplice based on an alleged finding of a Danish forensic expert with 30 years experience whose finding he alleges were not included in the Judgment and which is not part of the record of the proceedings and that the person who committed the crime is walking free and are therefore planning to go further in their quest for justice for the deceased.

6. It is stated that the accused does not own up to committing the offence but is sorry that the deceased lost her life. The family of the deceased through her husband on the other hand also feels that the accused must have had accomplices who are walking scot free.

7. The purpose or objectives of sentencing as per the Guidelines No. 4 are as follows:-

1) Retribution – to punish the offender for his/her criminal conduct in a just manner.

2) Deterrence – to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

3) Rehabilitation – To enable the offender refrain from the criminal conduct and become a law abiding person.

4) Restorative justice – To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasion victims', communities' and offenders' needs and justice demand that these are met. Further to promote a sense of responsibility through the offenders contribution towards meeting the victims needs.

5) Community protection: to protect the community by incapacitating the offender.

6) Denunciation: to communicate the community's condemnation of the criminal conduct.

8. Whereas Mrs. Kinyori for the convict urged the court to give the convict a non-custodial sentence, it is clear from the probation's pre-sentencing report that the accused feels that injustice has been done to her since she is innocent which fact has been supported by the family of the deceased. This therefore brings into question the objective of the sentence in respect of the accused herein. To my mind the convict herein feels that she is innocent and therefore may not benefit from rehabilitation and deterrence sentence.

9. On the other hand the family of the deceased feels that the conviction of the accused is not restorative enough to them. This therefore leave the court with retribution that is to say to punish the offender for her criminal conduct in the eye of the court and denunciation to communicate the condemnation of the criminal conduct. Whereas compassion need not be exiled from the decision of the court this is a matter where the court is left with the only option of doing what the law provides.

10. Section 204 of the Penal Code provides that a person convicted of murder shall be sentenced to death and whereas this court has held that where there are circumstances warranting the court to exercise

compassion in the quest for justice the court can pass any other sentence rather than the one provided in statute, based on the reasons stated herein that is the conduct of the offender and her attitude towards the conviction and that of the family of the deceased, this is a matter where the court ought to be bound by the law as provided for in respect to the offence the convict has been convicted of.

11. The convict is therefore sentenced to suffer death as in law provided for.

12. The convict has a right of appeal against both conviction and sentence while the State has a right of appeal against the acquittal of the 2nd and 3rd accused.

DATED, DELIVERED and SIGNED at Nairobi this **31st** day of **October**, 2017

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J. WAKIAGA

JUDGE

In the presence of:-

Mrs. Mwaniki for the State

Mrs. Kinyori for the Accused

Accused person present

Court Assistant Tabitha