



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CRIMINAL CASE NO. 75 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

DANIEL MUNYI MWANIKI.....ACCUSED

SENTENCE

1. The accused **DANIEL MUNYI MWANIKI** was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code the particulars of which were that on the night of 4th day of September, 2012 at Thiongo location in Kabete Division within Nairobi County murdered **ANN NJERI KIRAGU**.

2. He pleaded not guilty, was tried and convicted as charged in a trial that took five (5) years to conclude. In mitigation the accused through his Advocate on record submitted that upon his arrest the accused was in custody for a long time a period of time in which he had an opportunity to reflect on what had happened. He pleaded with court to give him a further opportunity for rehabilitation. It was submitted that the accused had a wife aged 29 years with two children aged 11 years and two (2) months respectively who were looking upon him for guidance. For the sake of the said children the court was persuaded to forgive the accused.

3. On behalf of the prosecution it was submitted that the accused should be given the mandatory sentence since the post mortem report showed the nature of attack meted upon the deceased which caused the family of the deceased to reallocate for specialized treatment and fear of attack.

4. In compliance with the Sentencing Policy Guidelines the court ordered for presenting report in which it was stated that the offence was committed after a disagreement between the accused and the deceased over the use of a loan the accused had allegedly obtained when they were in the house drinking alcohol and that according to the accused it is the deceased who first stabbed him with a knife on the upper abdomen. It was stated that the accused was married with two children aged eleven (11) years and five (5) months respectively who requires his attention. The family of the offender were supportive of the same being given a lesser sentence. It was further stated that the offence occurred not out of the will of the offender.

5. On the victim impact statement it was stated that all the members of the deceased family had reallocated to the USA save for one sister having been traumatized and that the child of the deceased who experienced what transpired on the material day had to receive counseling in the USA and therefore the offender should be given a sentence equal to the offence committed.

6. The purpose or objectives of sentence as per the Judiciary Sentencing 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.

7. The offender herein has a young family who needs his care and protection and whereas the law is coached in mandatory terms in Section 204 of the Penal Code; this is a case where justice ought to kiss mercy for the sake of the offender’s young family who needs his care and attention and the accused to be rehabilitated further. It is clear from the pre-sentencing report that the family of the deceased have ‘moved on’ as Kenyans are usually urged to so do by the political class but are calling for a sentence which is commensurate to the offence.

8. Whereas there is no appropriate sentence that can restore the life of the deceased herein and having stated herein above that the offender needs further rehabilitation as mercy kisses justice in his favour noting that the same also sustained stabbed injuries at the time of the commission of this offence while he attributed to the deceased, I am of the considered opinion and hold that the following sentence will serve the justice of this matter; the accused shall suffer and is hereby sentenced to five (5) years to be served as follows:- two (2) years in custody so as to meet justice to the family of the deceased and as a deterrence to any potential offender and three (3) years thereafter to be served on probation so as to rehabilitate the offender while enabling him to take care of his young family and it is so ordered.

9. The accused has 14 days right of appeal both on conviction and sentence while the State has the legality of right of appeal on the sentence herein.

DATED, SIGNED and DELIVERED at Nairobi this 22nd day of November, 2017

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J. WAKIAGA

JUDGE

In the presence of:-

Mrs. Kinoti for the State

Mr. Olewe for the accused

Accused present

Court clerk Tabitha