



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**HIGH COURT CRIMINAL CASE NO 99 OF 2014**  
**REPUBLIC.....PROSECUTOR**  
**VERSUS**  
**K M S.....ACCUSED**  
**SENTENCE**

1. The accused **K M S** 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 13<sup>th</sup> October, 2014 at Waruku village Dagorretti District within Nairobi County murdered **ROSE MUKUI**.

2. He pleaded not guilty and was tried and convicted of the murder of ROSE MUKUI. In mitigation the accused, through his Advocate on record, submitted that he was a first offender and asked for leniency and to be accorded a non-custodial sentence.

3. In compliance with the provision of Sentencing Policy Guidelines the court called for pre-sentencing report which was presented in court in which it was stated that the accused who suffers from HIV-AIDS stated that he was sorry for not being able to assist the deceased and save her life when they were allegedly attacked by thugs. It was further stated that the accused was a law abiding person before his arrest and should therefore be accorded mercy. It was stated that the offender lived with the deceased who was a mother of three children and considered them his.

4. On the victim impact statement it was that the deceased had three children out of wedlock aged 8, 6 and 4 years respectively who she supported together with her aged parents on whose care the children now are. The parents of the deceased were stated to be bitter over the death and would want the accused to face the full force of the law and that the deceased was in a violent relationship with the deceased before her death.

5. 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.

6. In this matter the accused and the deceased were in a marital relationship in which the deceased was expected to receive love, care and protection and any domestic problem arising therefore was expected to be resolved in amicable manner without resorting to violence and cruelty which ultimately led to her death.

7. From the manner the deceased met her death and the nature of the injuries sustained I am of the considered opinion and find that this is a matter that calls for a deterrence and denunciation sentence so as to deter any person in a relationship from committing similar offence and to communicate the community's condemnation of the criminal conduct of the offender and the only sentence which will meet the said objectives is that provided for under Section 204 of the Penal Code.

8. The convict is therefore sentence to suffer death as in law provided for and it is so ordered. The accused has right of appeal both on conviction and sentence.

DATED, SIGNED and DELIVERED at Nairobi this **21<sup>st</sup>** day of November, 2017

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**J. WAKIAGA**

**JUDGE**

**In the presence of:-**

*Mr. Meroka for the State*

*Mrs. Gulenywa for the accused*

*Accused present*

*Court clerk Tabitha*