



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
HIGH COURT CRIMINAL CASE NO. 34 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

ERIC OMONDI OTIENO.....ACCUSED

SENTENCE

1. The Accused **ERICK OMONDI OTIENO** was convicted of the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code the particulars of which were that on 8th of October, 2013 at Mwiki area Kasarani District within Nairobi murdered **REUBEN ODUOR OYERO**.
2. In compliance with the Sentencing Policy Guidelines, the court ordered for a pre-sentencing report including victim impact statement which was submitted and in which it was stated as follows:-
 - 1) The accused aged 30 years is the first born in a family of five siblings and is married. Both the accused parents are dead and he is a father of three children aged between ten (10) and five (5) years.
 - 2) At the time of the commission of the offence he was working at Gitwamba Stone Ltd.
 - 3) He maintains that he did not commit the offence.
 - 4) He was the breadwinner for his family including his siblings whom he was educating and that since his arrest the family had disintegrated.
 - 5) He had been fully reformed and rehabilitated in remand custody having attained two Diploma Certificates in Bible Correspondence and Theology and a certificate in peer counseling.
 - 6) The wife pleaded for mercy since they had no one else to look after the family.
 - 7) The area chief confirmed that the offender was well known to him since childhood as a polite and responsible person who took over the family responsibilities upon the death of his parents and that the family home was now deserted since his arrest as his younger siblings had been taken custody of by relatives.
 - 8) On the victim impact statement it was stated that the deceased was married with three children and the wife who took over the family mantle, was sickly after kidney failure and is very bitter

over the death of the husband which led to her daughter dropping out of college and first born son relocating to the village.

3. 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.

4. I have taken into account the evidence tendered before the court on the motive of the crime herein noting that both the accused and the deceased were friends working together and the accused had been suspended from his job which action should not have led to the death of the deceased. I have also taken into account the mitigation by Mr. Wamwayi for the accused and is of the considered opinion and hold that a deterrence sentence would best serve the objective of sentencing the offender as nobody has right of making a determination as to if someone should live or die out of a disagreement or dispute. From the evidence on record, it is clear that the accused premeditated, planned and executed his plans herein by calling the deceased on phone, setting a meeting with him and instead of amicably settling any disputes between them, inflicted fatal injuries on the same and walked away leaving the same bleeding to death in his car and as if that was not enough taking off from the city.

5. I therefore find and hold that this is a case where the sentence provided for under Section 204 of the Penal Code ought to be and is hereby given. The accused shall suffer death as in law provided for having been found guilty of murder and it is so ordered.

6. The accused has a right of appeal both on conviction and sentence.

DATED, SIGNED and DELIVERED at Nairobi this **19th** day of December, 2017

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J. WAKIAGA

JUDGE

In the presence of:-

Miss Wegulo for the State

Mr. Ambani for Mr. Wamwayi for the accused

Accused present

Court clerk Tabitha