

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 73 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

PETER MAYEKA MOYONGU.....ACCUSED

SENTENCE

Peter Mayeka Moyongu was charged with the murder of Job Maina Samwel contrary to section 203 as read with section 204 of the Penal Code. The offence was committed on 27th June 2013 at Kware Slums in Ongata Rongai Township within Kajiado County. The accused was tried, found guilty and convicted for murder in a judgement delivered in court on 16th March 2016. The matter was set for mitigation before sentence on 24th March 2016.

Mr. Oduor mitigated on behalf of the accused by stating that the accused is first offender and the sole bread winner of a minor child under his care after his wife left him as a result of the incident giving rise to this offence. Counsel asked the court to exercise leniency in sentencing the accused.

Mitigation is required in all criminal cases by dint of section 329 of the Criminal Procedure Code which states as follows:

The court may, before passing sentence, receive such evidence as it thinks fit to inform itself as to the proper sentence to be passed.

My understanding of this section is that the purpose of mitigation before the imposition of sentence is to guide the court as to the proper sentence to pass. The mitigation may introduce circumstances that may explain why a certain offence was committed or why an omission occurred. The taking into account of these mitigating circumstances allows the court to exercise discretion in sentences. Yet the wording of section 204 of the Penal Code, the penalty section in the offence of murder, does not allow the court discretion. The only way to go about this is to take into account the mitigation of a convicted person and pass the mandatory sentence since the law denies the court that discretion where the mitigation would have been taken into account in sentencing. This court still harbours hope that the Legislature shall address this anomaly in the law.

Having heard the mitigation by the accused and taking into account that the only sentence in a murder conviction is death, I hereby sentence the accused to death for the offence of murder. The execution of the sentence shall be carried out in the manner authorized by the law. Orders shall issue accordingly.

Dated, signed and delivered this 30th day of March 2016.

S. N. MUTUKU

JUDGE

In the presence of:

Ms Onunga, the prosecution counsel

Mr. Oduor, the defence counsel

Mr. Peter Mayeka Moyongu, the accused

Mr. Daniel Ngumbi, court clerk