



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYAMIRA**  
**CRIMINAL CASE NO.65 OF 2015**  
**REPUBLIC.....STATE**  
**-VERSUS-**  
**JANET KERUBO NYAKUNDI.....ACCUSED**

**SENTENCING**

1. The accused person herein, **Janet Kerubo Nyakundi**, was convicted of the offence of murder with which she was charged contrary to **Section 203** as read with **Section 204 of the Penal Code**. By judgement delivered on the 18<sup>th</sup> day of March, 2016 the court found her guilty as charged and convicted in accordance with **Section 322 of the Criminal Procedure Code**.

2. However, before I pronounce the sentence, I wish to deal with submissions raised by counsel for the defence, that to-day, under the new constitution, the court has an option to mete out a different sentence, such as sentencing the accused to life imprisonment, instead of death penalty.

3. The decision of **Joseph Njuguna Mwaura & 2 Others -vs- Republic, Criminal Appeal No. 5 of 2008 Court of Appeal** restates the law.

The court referred, *inter alia*, to **Art. 26** of the constitution which states, inter alia, as follows:

Every person has the right to life. The life of a person begins at conception.

[**Therefore, my words**] A person shall not be deprived of life intentionally, except to the extent authorized by this constitution or other written law.

[**And, my word**] other written laws here are (**in the context of Kenya, my words**) which decrees the mandatory death penalty are:

1. **Section 40 of the Penal Code** in respect of the offence of treason
2. **Section 203 as read with section 204 of the Penal Code** in respect of the offence of murder.
3. **Section 60 of the Penal Code** in respect of the offence of administering of oaths to commit a capital offence.
4. **Section 296 (2) of the Penal Code** in respect of the offence of robbery with violence.
5. **Section 297 (2) of the Penal Code** in respect of the offence of attempted robbery with violence.

Here the appellants appealed against death sentence, they submitted that the death sentence was outlawed by the constitution of Kenya, 2010 as it violated the right to life and it amounted to degrading and inhuman treatment.

4. Therefore this decision well reasoned out renders the decision of **Godfrey Ngotho Mutiso -vs- Republic [2010] e KLR ,Criminal Appeal 17 of 2008** was per incuriam, that decision had argued that death sentence in Kenya was outlawed. The reasoning was rather warped.

5. Therefore a person convicted of the offence of murder as in the instance case, the only sentence sanctioned by law which I hereby pronounce is but death.

It is not only constitutional, it is mandatory.

6. Accordingly, you are hereby condemned to death as is by law established.

And may the Lord have mercy on your soul if you believe in him. As per **Section 330**, you are hereby given 14 days right of appeal.

**Dated and delivered at Nyamira High Court this 22<sup>nd</sup> day of April, 2016.**

**C. B. NAGILLAH**

**JUDGE**

**In the presence of:**

Nyamwange hold brief for Nyasimi for accused person

Konga for the State

Mercy Court clerk