



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL CASE NO. 23 OF 2014

LESIT, J.

REPUBLIC.....PROSECUTION

VERSUS

FRANCIS KAMUNYU KAMAU Alias MAYAI.....1ST ACCUSED

PAUL NDAI NDUNGU.....2ND ACCUSED

RULING ON SENTENCE

1. The accused persons have been convicted of murder contrary to **section 203** of the **Penal Code**.
2. I have considered that both accused persons have been treated as first offenders by the prosecution.
3. I have also considered that they are young people who are at the prime of their life with young families who entirely depended on them.
4. Mr. Oduor for the accused persons asked the court to consider the Probation Officers Report filed in court on 24th June 2014, at a time the accused bond application was being considered. I have considered the report and all it shows are two things.
5. The first is the fact that the deceased had an elder brother who was also lynched for criminal activities in the area by unknown people. The second is that the community was happy with the accused persons after the death of the deceased.
6. That Report by the Probation was addressing the issue whether there were any reasons not to release the accused on bond in relation to the security of the community and that of the deceased family. It was also addressing the issue whether releasing the accused to the community pending trial may pose any threat to their security.
7. The 1st accused has given to court various Diplomas and Certificates showing that he has qualified as a Pastor and a Peer Counsellor while in Prison. I have considered his commendable achievements.
8. I have considered the circumstances of the case. The deceased was lynched in an open place, at the heart of a local shopping area and in a rubbish heap where everybody who cared could see.

9. No one has any right to take another person's life for any reason including suspicions about bad character or antecedents. That is tantamount to taking the law in ones hands. That is also tantamount to being a judge in one's own course. No one is justified to take life even if the action is popular in the eyes of the community. What should have been done was to arrest the deceased and hand him over to the police for legal action.
10. Was it allowed for people to have such conduct, the Rule of Law, Law and Order and Good Governance would all be difficult if not impossible to uphold.
11. What the accused did, even though appearing popular to the community and even though in the eyes of the community they appear as heroes, is abhorable, detestable and above all criminal. An equally young man just like the accused persons lost his life.
12. I have taken into account the period the two accused have spent in custody during the pendency of this case since their arraignment in court in March, 2014.
13. There is only one sentence for this offence given the fact the accused were save when they committed the offence. I hereby sentence each accused to death as by law prescribed.
14. Right of Appeal within 14 days explained.

READ, DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20th APRIL, 2016.

LESIIT, J.

JUDGE.