

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 39 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

GEOFFREY AMIANI LUMIRA.....ACCUSED

RULING

Geoffrey Amiani Lumira was charged with murder contrary to section 203 as read with section 204 of the Penal Code. The victim is Bernard Otoro. The offence was committed at Muthurwa Market within Nairobi County. He was tried and in a judgement delivered on 12th May 2016 he was found guilty of murder and was convicted. Sentencing was deferred pending presentation by the prosecution of the previous criminal records of the accused and his mitigation. After several adjournments, this court was informed on 16th June 2016 that there were no recorded previous criminal records and that Geoffrey can be treated as a first offender.

Ms Ekin who represented Geoffrey in this trial mitigated briefly that the accused pleads for leniency; that he is remorseful; that he is a first offender and that he is the sole bread winner who takes care of his elderly mother.

The penalty for murder is death as stipulated under section 204 of the Penal Code. The section is couched in mandatory terms. Courts in this country have held in various decisions that the death sentence is authorized by law as the only sentence available for offences like murder and other capital offences. The Constitution under Article 26 (3) allows death sentence in as far as it is authorized by the Constitution or "other written law". Such "other written law" is the Penal Code which is the law under which the accused was charged. While the law requires the court to take the mitigation of a convicted person before sentencing there is nothing the court can do in terms of applying the mitigation to guide its sentencing. While this court therefore considers that the accused person is remorseful, is a first offender and prays for leniency, the law does not allow this court discretion in passing any other sentence than death sentence. It is my duty therefore to sentence the accused to death as by law established. He shall suffer death in the manner authorized by the law. He has been informed of the right to appeal against the conviction and sentence within 14 days of today's date. It is so ordered.

Dated, signed and delivered this 21st day of June 2016.

S. N. MUTUKU

JUDGE

In the presence of:

Ms Macharia for the prosecution

Ms Ekin for the accused

Mr. Geoffrey Amiani Lumire the accused

Mr. Daniel Ngumbi court clerk