



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO. 47 OF 2012**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ASHER OTIENO.....ACCUSED**

**SENTENCE**

1. Asher Otieno Ochieng is charged with the offence of murder contrary to section 203 as read with Section 204 of the Penal Code. The particulars of offence are that on 15<sup>th</sup> day of June 2012 at Gachie Trading Centre within Nairobi County murdered Peter Odhiambo.

2. After trial, the court found the case against the accused proved beyond reasonable doubt and convicted him accordingly. He could not however immediately offer mitigation as his counsel was not present.

3. In subsequent proceedings, **Mr. Opollo** for the accused offered mitigation on behalf of the accused. He told the court the accused was 30 years old and has a 5 year old son and ageing parents for whom he was the sole breadwinner. Counsel further submitted that the accused was deeply remorseful and was sickly having suffered ulcers. In addition, the accused told the court that he had been in remand for 5 years and prayed for a lenient sentence. He said that before arrest he was using herbal medicine for his medical condition and that he could not access the same while in prison. He requested the court to conduct a home inquiry prior to sentencing.

4. On his part, prosecution counsel submitted that the State had no prior criminal record of the accused and that he may consequently be treated as a 1<sup>st</sup> offender.

5. The purpose of sentencing is usually to express society's disapproval of unlawful conduct, to deter offenders from committing offences, to separate offenders from society if necessary, to assist in rehabilitation of offenders; and, to promote reconciliation by providing for reparation for harm done to victims in particular and to society in general.

6. In this case, I have considered the purpose of sentencing as stated above. I have also considered the mitigation made by the accused. In convicting the accused of the charge of murder, I made a finding that he killed a helpless, defenceless child and mutilated his body and left it in a bush. He subsequently went to work as if nothing had happened and for two weeks lied to his wife and mother of the deceased that the deceased was safe in a hospital. I find these to be aggravating circumstances and the accused undeserving of the mercy and leniency of the court. It is desirable that society is protected against him. It is my considered view that the heartless murder deserves only one sentence – that which is provided by law.

In the premises, I sentence the accused Asher Otieno Ochieng to suffer death as provided by Section 204 of the Penal Code and I so pronounce the sentence.

**Sentence delivered and dated at Nairobi this 29<sup>th</sup> day of September, 2016**

**R. LAGAT-KORIR**

**JUDGE**

In the presence of:

.....: Court clerk

.....: Accused

.....: For the accused

.....: For the State