



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**CRIMINAL CASE NO. 42 OF 2010**

REPUBLIC.....PROSECUTOR

**VERSUS**

BENARD GATHIACA MBUGUA.....1ST ACCUSED  
DAVID WANYIRI NYAGUTHIE.....2ND ACCUSED  
JOHN MZEE MUTUU.....3RD ACCUSED  
DANIEL ELIMLIM EBUKE.....4TH ACCUSED  
DAVID KINYAGIA MARY.....5TH ACCUSED  
FRANCIS WAMBUA AYIEMBA.....6TH ACCUSED  
ERIC KIPKURUI KIPKEMOI.....7TH ACCUSED  
JOHN KARANJA NJUGUNA.....8TH ACCUSED

**RULING**

In a judgment delivered on 20th December 2013, I convicted the accused of the felony of murder. This Ruling only relates to the sentence.

2. The penalty or punishment for the felony of murder is death. That is what is provided for in Section 204 of the Penal Code, (*Cap. 63, Laws of Kenya*).

3. Each of the convicted persons submitted typed statements in mitigation. Bernard Gathiaka Mbugua the 1st accused, pleaded in his statement that he is a 28 year old man. He has been in custody for just over 44 months about 3<sup>1</sup>/<sub>2</sub> years. He says that he was about to marry when he was arrested and charged. He says he is a born-again Christian, and is remorseful. He is also a first offender, and says that he has learnt through pain that crime does not pay.

John Mzee Mutuu, the 3rd Accused is now 24 years of age, and has, like the first accused been in custody for the last 3<sup>1</sup>/<sub>2</sub> years. He says that the death penalty provided in Section 204 of the Penal Code is antithetical and inconsistent with the letter and spirit of the Constitution. He promises to live within the law and be a peer among his fellow youth against the danger of involving themselves in unlawful deeds or crime.

David Kinyagia Mary, the 5th Accused likewise expressed remorse. He is now 27 years of age, and like his fellow accused has been in custody for 3<sup>1/2</sup> years.

The mitigation by Eric Kipkurui Kipkemoi alias Boi, the 7th Accused and John Karanja Njuguna, the 8th accused are in similar vein. They have, as remandees, been exemplary and have not broken any prison rules or regulations. They say, they have learnt that “*crime does not pay*”.

I have considered the mitigation statement by each of the accused, and I treat their statements seriously, and being youth, I sympathise with each and every one of them. They however committed a terrible offence. They unlawfully took away the life of Clement Muguimi, who was doing nothing more than his duty to guard his employer's property upon which these accused and others were trespassing with bravado, and threats which ended in the death of Clement Muguimi.

I agree with each of the accused the death penalty provided for in Section 204 of the Penal Code, is antithetical and inconsistent with the right to life guaranteed under Article 26(3) of the Constitution. The accused however deserved to stay in prison as a punishment for their crime against the deceased, and against society.

Taking into account that the accused may have been led by youth bravado, and the mob of which they were part, and taking into account that the accused have been in remand for over three years, I sentence each of the accused to twenty years imprisonment to commence from the date of their arrest and detention in prison.

There shall be orders accordingly.

**Dated, signed and delivered at Nakuru this 28<sup>th</sup> day of February, 2014**

**M. J. ANYARA EMUKULE**

**JUDGE**