



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 5 OF 2012**

**ERICK MUTURI PETER.....APPELLANT**

**VERSUS**

**REPUBLIC.....PROSECUTION**

**(Being an Appeal from the Conviction and Sentence by E.K. NYUTU Resident Magistrate Embu in Criminal Case No. 23 of 2012 on 10th January 2012)**

**J U D G M E N T**

1. **ERICK MUTURI PETER** the appellant was convicted of the offence of **Manslaughter** on two counts and was sentenced to 40 years on each count. The sentences are to run concurrently.
2. I have perused the lower Court record and I am satisfied that the plea was unequivocal.
3. The appeal was admitted on the issue of sentence only.
4. The persons who were killed were the deceased's wife Plauline Karimi and their son Ilwin Munene.
5. The cause of the brutal actions of the appellant was alleged infidelity by the deceased. The facts confirmed that the appellant and his late wife had had a misunderstanding during the day when the appellant investigated the deceased's phone. He then attacked his wife and her sister. The wife was carrying their son on her back.
6. If indeed what the appellant stated in mitigation was true then he was provoked to the limit. The Prosecution did not challenge that statement.
7. However, inspite of the provocation his brutal killing of his immediate family members was uncalled for. The two deceased suffered several cuts inflicted by the appellant (EXB2&3). They were helpless and never fought back.
8. Even the State does not support the sentence. I am guided by the Judgment by the Court of Appeal in **MICHAEL NYAKAGWA VS REPUBLIC – Nakuru Criminal Appeal No.140/09** where an appeal against the sentence of 5 years in similar circumstances was dismissed.
9. Inspite of the appellant's beastly attack on his wife and son, when all circumstances are considered I find the sentence of 40 years imprisonment on each count to be harsh and manifestly excessive. I find a sentence of ten (10) years to be appropriate.

10. I hereby set aside the sentence of forty (40) years imprisonment on each count. I substitute it with a sentence of ten (10) years imprisonment on each count.

Sentences to run concurrently from the date of conviction.

Orders accordingly.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 20TH DAY OF JUNE, 2014.**

**H.I. ONG'UDI**

**J U D G E**

**In the presence of:-**

**Ms. Mbae for the State**

**Appellant**

**Njue/Kirong CC**