

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL CASE NO. 35 OF 2010

REPUBLIC PROSECUTOR

versus

SAMSON GATIMU MUNGUNAACCUSED

SENTENCE

The Accused herein was convicted of the offence of murder of BETH NYAMBURA IRUNGU on 12th day of September 2010.

In mitigation Mr. Kimunya for the accused submitted that the same is a family man with four children aged between eight (8) to seventeen (17) years and that he is remorseful for what happened and that it was due to lack of judgment affected by alcohol.

He therefore submitted that even though death sentence is the only sentence provided for under section 204 of the Penal Code this is not the only sentence that may be passed.

I am aware that the court of appeal in the case of GODFREY NGOTHO MUTISO vs REPUBLIC (2010) ekl held that the imposition of mandatory death sentence for a person convicted for murder or robbery with violence is inconsistent with the spirit and the letter of the constitution and that it is not only death sentence that shall be imposed. I take the view that the law as it stands means that once a person is convicted of murder then the only available sentence therein is death.

I have however noted that though it did not form part of the accused defence at the time of the trial Mr. Kimunya has submitted that the accused was so intoxicated so as to affect his judgment.

I therefore agree with Mr. Kimunya that the accused ought to be spared the death sentence since Mr. Njau for the state submitted that he is a first offender. However the circumstances of the commission of the offence before me requires that the accused be given a stiffer sentence.

I therefore sentence the accused to serve 30 years imprisonment from the 23rd day of September 2010 when he was first arraigned in court.

Dated and delivered at Nyeri this 21st June 2013.

J. WAKIAGA

JUDGE

Mr. Kimunya for the accused.

15 days right of appeal.

Court: Sentence read in open court in the presence of Mr. Kimunya for the accused and in the absence of the representative by Deputy Public Prosecution.

J. WAKIAGA

JUDGE