



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL CASE NO. 55 OF 2004**

REPUBLIC.....PROSECUTOR

VERSUS

GODFREY NGOTHO MUTISO.....ACCUSED

**RULING**

The accused **GODFREY NGOTHO MUTISO** has been convicted for the offence of murder. Before a sentence was imposed the matter went to the Court of Appeal which delivered a landmark decision in which the court found that the mandatory death sentence in murder cases was unconstitutional. As such a wide range of sentences are open for the offence of murder which will depend on a variety of factors which include

- The social circumstances of the accused
- Possibility of re-integration into society
- Possibility of reform
- Attitudes of the victims family

The state have indicated that they will not be pursuing the death penalty in this case. The death sentence however remains the maximum sentence for this offence. I do agree with **Mr. Wameyo** Advocate that the maximum sentence ought to be reserved for the **worst possible manifestation** of any offence.

I have noted that **Hon. Justice J. B. Ojwang** did on 18<sup>th</sup> October, 2010 give certain directions regarding the conduct of the sentencing phase of this trial. The state was to canvass arguments for whatever sentence they were proposing, thereafter Mr. Wameyo for accused was to make a response. The Hon. Judge (as he then was) also directed that certain documentation may need to be presented before the court such as

- i. Victim Impact statement (if available).
- ii. Other relevant reports

I am of the opinion that a Social Enquiry Report **not** a Probation Report would be of assistance in guiding the court on the appropriate sentence to impose. I reiterate that what is being sought is a Social Enquiry Report and **not** a Probation Report (which would suggest that the court is considering placing the accused on probation). Such Social Enquiry Report should include the circumstances of the offence, the offender's background, attitudes of the victim, interviews with prison authorities, attitude of offender, attitude of his society/village, etc. Once such a report is availed then mitigation maybe offered and the court will proceed to impose a sentence thus closing the trial. This court directs the probation department

to prepare and file in court such a Social Enquiry Report on 18<sup>th</sup> November, 2013.

**Read in open court this 28<sup>th</sup> day of October, 2013.**

**M. ODERO**

**JUDGE**

In the presence of:

Mr. Jami for State

Ms. Kayata h/b Mr. Wameyo for Accused

Court Clerk Mutisya

**Court:**

Mention 29<sup>th</sup> October, 2013 for state to canvass on proposed sentence.

**M. ODERO**

**JUDGE**

**28<sup>TH</sup> OCTOBER, 2013**