



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**MURDER CASE NO.28 OF 2008**

**REPUBLIC.....PROSECUTOR**

**-VERSUS-**

**JACKLINE ATIENO AWUOR.....ACCUSED**

**RULING ON SENTENCE**

The accused person was charged with the offence of murder contrary to section 203 as read with Section 204 of the Penal Code. Section 204 provides:-

**“Any person convicted of murder shall be sentence to death”**

The defence counsel mitigated to arrest the death sentence under the provisions of Section 324 of the Penal Code. The Court of Appeal on the other hand in the case of **Godfrey Ngotho Mutiso vs Republic** – Criminal Appeal Case 17 of 2008 had this to say of the death sentence under Section 204.

**“On our own assessment of the issue at hand and the material placed before us, we are persuaded, and now so hold, that Section 204 of the Penal Code which provides for a mandatory death sentence is antithetical to the constitutional provisions on protection against in human and degrading punishment on treatment and fair trial. We not that while the Constitution itself recognizes the death penalty as being lawful, it does not say anywhere that when a condition for murder is recorded, only the death sentence shall be imposed. We declare that Section 204 shall, to the extent that it provides that the death penalty is the only sentence in respect of the crime of murder, is inconsistent with the letter and spirit of the Constitution which as we have said, makes no such mandatory provision.”**

Guided by the above authority, the circumstances and facts of the case and the mitigation on behalf of the accused, although committed a heinous act against her on flesh and blood I find that the accused deserves a lesser sentence and I will therefore not commit her to the death sentence. I sentence her to seven years. In computing the 7 years, I will consider the 4 years spent in custody. She will therefore serve the remainder of the 7 years which is 3 years.

**DATED AND DELIVERED THIS 24<sup>TH</sup> DAY OF JUNE, 2011.**

**ALI-ARONI**

**JUDGE**

**In the presence of:**

..... for State

..... Accused person present