



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 32 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

GEREVASIO MWENDA.....1ST ACCUSED

DANIEL MUGAMBI ALIAS KIRU.....2ND ACCUSED

GEOFFREY MWITL.....3RD ACCUSED

SENTENCE

The crime

[1] The two offenders before the court, that is the 1st accused **Gerevasio Mwenda** and the 2nd accused **Daniel Mugambi alias Kiru** were found guilty of the offence of murder contrary to section 203 as read with 204 of the Penal Code by the Judgment of the Court (Mabeya, J.) on 10th December 2020. The third accused, **Geoffrey Mwitl**, was acquitted

[2] Another accused **John Muthinja M'Ibere** absconded and the trial of the three accused persons proceeded in his absence.

[3] On the facts, the court found that the two accused, the 1st and 2nd accused had strangled the deceased as the cause of death was established by medical evidence as asphyxia secondary to strangulation.

Sentencing proceedings

[4] At the sentencing proceedings, Ms. Nandwa, Prosecution Counsel for the DPP urged a deterrent custodial sentence stating that the deceased's family were still grieving his loss and the two accused persons had not reached out to his family for any forgiveness although they could be treated as first offenders.

[5] Mr. Igweta, Counsel for the accused in mitigation for the offenders urged the court grants custodial sentences for the two accused who were young persons, respectively aged 32 and 36 with minor children, and the 2nd accused had been in custody for 4 years since April 2017 during which time he had attained some certificates for several courses in Christian/Bible studies.

The Sentence

[6] What sentence is appropriate for first offender, youthful offenders in their thirties with young families found guilty of a charge of murder c/s 203 as read with 204 of the Penal Code taking into account the principles of discretionary sentencing established by the Supreme Court's direction **Karioko Muruatetu & Anor. v. R** {2017} eKLR and the reform and rehabilitation objectives of imprisonment under Article 10 (3) of the **UN International Covenant on Civil and Political Rights, 1966**?

[7] I have recently held in KBT HCCRC NO. 50 of 2017, **R. v. Simon Evans Kandie** in very like circumstances of youthful offender that a composite sentence for the deterrent of the offender (and others of like mind) and his rehabilitation back into society on completion of sentence was appropriate as follows:

*“A dual purpose of deterrence and reformation of the offender may be achieved by a sufficiently severe sentence serving to **deter** both potential offenders and repeat offence by the offender, and also **reform** the offender into a person capable of lawful, productive*

living in society among other members of his community.”

[8] In that case, I passed a sentence of imprisonment for thirty (30) years, which allows the offender to get back to the society a reformed person, subject to remission for good conduct, after 20 years in prison.

Orders

[9] Accordingly, for the reasons set out above, the Court passes a sentence of **imprisonment for thirty (30) years** on each accused for the offence of murder contrary to section 203 as read with 204 of the Penal Code. The sentence for the 1st accused **GEREVASIO MWENDA** whose was out on bond during the trial shall commence from the date of this sentence and the sentence for the 2nd accused **DANIEL MUGAMBI ALIAS KIRU** who was in custody during his trial shall commence on **19th April 2017**, the date of his arraignment and remand to await his trial, pursuant to section 333 (2) Proviso of the Criminal Procedure Code.

Order accordingly.

DATED AND DELIVERED THIS 11TH DAY OF MARCH 2021.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Igweta, Advocate for the Accused.

Ms. Nandwa, Prosecution Counsel for the Prosecution.