



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARSEN

CRIMINAL CASE NO 7 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

SAMUEL GITAU KAMAU.....ACCUSED

RULING ON SENTENCE

1. Samuel Gitau Kamau (Accused) was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. He was alleged to have murdered his wife of 11 years one Lucy Wachu Njuguna at Githurai village in Mkunumbi Sub-location, Lamu West Sub-county within Lamu County on 10th June 2016.

2. The brief facts of the case are that the Accused was with his wife on the material night. He had picked her from a neighbour's house where a group of women had gathered to prepare food for a function. Somewhere in the middle of the night, the Accused raised an alarm that he had come back home to find his wife dead on their bed having been strangled. In his defence he stated that he had briefly left his wife in the house and gone to pick his motorcycle only to return and find her dead.

3. At the conclusion of the trial, he was found guilty and convicted as charged. The court is now called upon to consider an appropriate sentence.

4. The purposes of sentencing as captured in The Judiciary Policy Sentencing guidelines (2014) are:-

1. Retribution: to punish the offender for his/her criminal conduct in a just manner.

2. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

3. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law abiding person.

4. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.

5. Community protection: to protect the community by incapacitating the offender.

6. Denunciation: to communicate the community's condemnation of the criminal conduct.

These purposes are not exclusive in themselves and their application is dependent on the unique circumstances of each case.

5. At the sentencing hearing on 30th October 2019, I heard mitigation of the parties. For the prosecution, Mr. Onderi, learned Assistant Director of Public Prosecution told the court that the State had no previous criminal records of the Accused. Mr. Gekanana learned defence Counsel submitted that the Accused was 37 years old and a father of two school going children then aged 11 and 6 years respectively and who were in the custody of the deceased's mother. Counsel submitted that the Accused was remorseful and regretted his temperamental action on the fateful night. Counsel further submitted that the Accused had been in custody since his arrest. The Accused addressed the court in person and prayed to be given a non-custodial sentence to enable him take care of his children whom he said were suffering.

6. A pre-sentence probation officer's report filed on 23rd February 2020, sets out the Accused's background. It states that his family originally resided in Nyandarua before relocating to Mpeketoni as did the family of the victim. The report further states that the Accused persists in denying any role in the death of his wife and instead believes that his in-laws may have killed her because of a dispute over

property which she was supposed to inherit. The report states that the couple's children were now under the care of their maternal grandmother. The two children, when interviewed by the Probation Officer in Engineer, Nyandarua County, stated that they looked forward to being with their father again.

7. I have considered mitigation offered by the Accused as well as the pre-sentence and victim impact statement reports. I have carefully considered the submissions with respect to the welfare of the Accused's children. The probation report states that the two children, now aged 15 and 8 respectively are currently in the custody of their maternal grandmother and that the said grandmother was in constant communication with the Accused's mother. It is not true therefore that the children lacked care. It is however true that they deserve parental love and care.

8. The deceased in this case is the mother of the children and the Accused's wife of 11 years. I pose the question whether a person can murder their spouse then plead to be set free for the sake of the children. This court is alive to the Constitutional and statutory obligation to protect, promote and enforce the rights of children. In that duty therefore, the court must ask itself whether the children would be safe in the hands of a parent who has mercilessly taken away the life of their other parent. In this case, it is my view that the Accused cannot use the children to shield himself from the punishment he deserves.

9. In the circumstances of this case, and having considered all factors aforesaid and in the light of the purposes of sentencing, I am persuaded that the Accused shall benefit from a rehabilitative prison sentence.

10. The Accused shall serve 20 years' imprisonment which sentence shall run from the date of arrest and detention being the 28th June 2016.

11. The Accused has 14 days' right of appeal against both conviction and sentence.

12. Orders accordingly.

Sentence delivered, dated and signed this 14th day of April, 2021.

.....

R. LAGAT KORIR

JUDGE

Sentence delivered in the virtual presence of the Accused (linked at Malindi G.K Prison), his counsel Mr. Omwancha holding brief for Mr. Gekanana, Mr. J. Mwangi for the DPP and Mr. Kiprotich (Court Assistant).