



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 40 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

PATRICK KIRIMI MUKETHA.....1ST ACCUSED

ALFRED MUGAMBI MUNYUA.....2ND ACCUSED

MORIS THURANIRA MUNYUA.....3RD ACCUSED

SENTENCING

1. The three accused persons were all convicted by the judgment of this court (A Mabeya, J.) of 10th December 2020 for the offence of Murder contrary to section 203 as read with section 204 of the Penal Code. The deceased had died of severe head injury secondary to blunt trauma on the head. The post mortem report revealed that the deceased died of skull fracture.
2. Eye witnesses testified that in the bar where the incident occurred, they saw four people surround the deceased. Among the 4, were the 3 accused persons and the fourth person, Robert James is still on the run. They saw the 1st accused hit the deceased with a stool commonly known as 'sina taabu' on the head and thereafter the 2nd and 3rd accused persons joined in beating up the deceased and they thereafter dragged him outside the bar and escaped.
3. It is not the case that the accused persons and the deceased had all been 'revelling' together when the scuffle arose. The deceased had gone to the bar with his brother. The other accused persons all came differently with a common intention of harming the deceased. The trial Court found that the nature of the weapon used and the nature of the assault confirmed that the intention of the accused persons was clearly to inflict grievous harm upon the deceased. The 2nd accused was a bar attendant at the bar where the incident occurred. The 3rd accused was a brother in law to the deceased. The witnesses also indicated that the accused persons are their neighbours at home. Indeed, this attack was well orchestrated by the Accused persons thus demanding a serious penalty.
4. The Probation Officer furnished the Court with the respective pre-sentencing reports for the 3 Accused persons. For all the three, it is indicated in their respective reports that the victim's family are not opposed to the Accused persons being given non-custodial sentence.
5. The discretion of the Court in sentencing for the offence of murder was upheld by the Supreme Court in *Francis Karioko Muruatetu & Another v. R Petition No. 15 and 16 (Consolidated), (2017) eKLR*, as with other cases within the objectives of sentencing as set out in the *Kenya Judiciary Sentencing Policy, 2016* (see para. 92 of *Muruatetu*) as follows:

“Sentences are imposed to meet the following objectives:

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 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. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.

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

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

6. The court considers that a deterrent sentence is necessary for the very serious offence of murder contrary to Section 203 as read with Section 204 of the Penal Code in the circumstances of this case where the accused being persons well known to him, including by his own brother in law, had attacked and beaten the deceased at a bar in circumstances where the court found they intended to cause him grievous harm to the deceased. A custodial sentence is appropriate in accordance with the seriousness of the crime.

Orders

7. Accordingly, for the reasons set out above, the court passes on all the three accused persons, **Patrick Kiri Muketha, Alfred Mugambi Munyua, Moris Thurinira Munyua**, a sentence of imprisonment for thirty (30) years for the offence of murder contrary to Section 203 as read with section 204 of the Penal Code, taking into account any respective period of pretrial detention pursuant to section 333 (2) Proviso of the Criminal Procedure Code.

Order accordingly.

DATED AND DELIVERED ON THIS 6TH DAY OF MAY, 2021.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. B. Nandwa, Prosecution Counsel for the DPP.

M/S L. Kimathi Ikiara & Co. Advocates for the 1st and 2nd Accused.

Mr. Ngunjiri, Advocate for the 3rd Accused.