



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KITUI

HIGH COURT CRIMINAL CASE NUMBER 7 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

KULA NZOMO.....ACCUSED

J U D G E M E N T

1. **Kula Nzomo**, the Accused herein, is charged with the offence of murder Contrary to **Section 203 as read with Section 204 of the Penal Code**. The particulars are that, on the **12<sup>th</sup> April, 2020**, at Kathugu B Village, Musikini Mutitu Location within Kitui County, he murdered Nzomo Kula, his father.

2. The Accused person pleaded guilty to the charge and repeated the plea upon being cautioned by this court about the potential consequences of a plea of guilty given the seriousness of the offence committed. The Accused person upon being cautioned and after consultation with his advocate, maintained his plea of guilty when the charge was read over afresh. This court then entered a plea of guilty and directed the Director of Public Prosecution to present the facts of the case. The State presented the facts which briefly indicated that the Accused person had an altercation with his father (deceased) and when the argument degenerated, the mother stepped in to try and diffuse the attention but fast as she stepped in, the Accused person had picked a stone and aimed it at his father (deceased) and since the mother had stepped into the middle, the stone aimed at the father hit her instead and fell her down. When the father saw what had happened he fell down collapsed and collapsed. The Accused person then picked a mattock and started hitting at his unconscious father causing further injuries. The father died on the spot and as the Accused tried fleeing the scene, he was apprehended and arraigned.

3. The Accused person pleaded guilty to the facts as presented upon which the state tendered a post mortem report of Nzomo Kula as Prosecution Exhibit 1. This court then convicted the Accused upon his own plea and asked for a social inquiry to be conducted which has been done and a report dated 9<sup>th</sup> June, 2021 filed.

4. In mitigation, the Accused states that, he had an argument with his father after he (Accused) had been accused of stealing. He says that he hit his father because of the argument. The defence Counsel asked this court to be lenient to the Accused given the fact that he is a young man aged 26. He says he is remorseful and asks this court to be guided by the authority in the case of **Francis Karioko Muruatetu** and consider handing the Accused a sentence other than the ultimate sentence prescribed under **Section 204 of the Penal Code**. The Accused further states that, if granted a custodial term he would use the opportunity to reform contending that he committed the offence out of anger.

5. This court has considered the social inquiry report in respect to the Accused person and finds the report quite adverse to the Accused. He is associated with drug addiction and criminal activities which however have not been escalated to courts of law.

6. I have addressed my mind to the provisions of Section 204 of the Penal Code and the Supreme Court's decision in the new celebrated case of **Francis Karioko Muruatetu (2017) eKLR**. It is true that courts now are not bound by the mandatory nature of sentences as prescribed by statute.

Courts still do have a discretion to met out any other appropriate sentence other than the mandatory sentence such as the one prescribed under **Section 204 of the Penal Code**. This is not to say that a trial court cannot impose the mandatory sentence where circumstances justifies imposition of the mandatory sentence such as the death penalty. In the exercise of discretion this court has a number of guidelines to help it arrive at an appropriate sentence. This includes, a social inquiry and the Judiciary sentencing Policy Guidelines that give general objectives geared towards achieving. These include: -

**i. Retribution:** To punish the offender for his/her criminal conduct in a just manner.

**ii. Deterrence:** To deter the offender from committing a similar offence.

**iii. Rehabilitation:** To enable offender to reform.

**iv. Restorative Justice:** To address the needs arising from the criminal conduct.

**v. Community Protection:** To protect the community by incapacitating the offender.

**vi. Denunciation:** To communicate community's Condemnation of the Criminal Conduct.

7. This court has factored in all the above and finds that the Accused person deserves a chance to reform and transform his life. He is asking for leniency but the manner in which he committed the offence and the way he inflicted numerous injuries to his father really showed no mercy. The post mortem report reveals that the deceased suffered numerous injuries and fractures on the head, spine and limbs apart from cuts and lacerations in almost every part of his body. The attack was cruel and inhumane. The deceased obviously died a painful death and to act as a deterrence and give the Accused chance for rehabilitation, I find that it is appropriate to hand him a custodial sentence. He is hereby, sentenced to serve 34 (thirty-four) years in jail. He has 14-days right of appeal.

**DATED, SIGNED AND DELIVERED AT KITUI THIS 18<sup>TH</sup> DAY OF JUNE, 2021**

**HON. JUSTICE R. K. LIMO**

**JUDGE**