



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

MURDER CASE NO. 11 OF 2017

REPUBLIC.....PROSECUTOR

-VERSUS-

SAMUEL NDUNG’U WAINAINA.....ACCUSED

RULING ON SENTENCING

The accused was charged and convicted with offence of **Murder contrary to Section 203 of the Penal Code** vide judgment of Wendoh J. delivered by myself on 13/05/2021 and dated and signed by Wendoh J. on 03/03/2021.

After delivery of the verdict, the State via Ms. Rugut State Counsel confirmed that there were no previous records and thus the accused can be treated as a first offender.

In mitigation, the accused’s advocate Mr. Mbugua told court that he was instructed, that accused is remorseful. He also told the court that the deceased died in course of being disciplined due to his wayward conduct. That the accused has now realized that the was wrong to take law into his own hands in disciplining the deceased leading to the cause of death. He urged court to accord lenience in sentencing.

The court then ordered the probation officer to make report on accused’s background leading to the incident in which the deceased died.

The matter was fixed for mention on 06/06/2021 for the report to be filed.

However, come 08/06/2021 a report from the State Counsel indicated that the post convict report (PCR) could not be prepared as the accused refused to cooperate.

Thus the court directed that the sentencing would therefore proceed without the sought PCR report.

The court will thus rely on record to determine the appropriate sentence.

Under **Section 204 of the Penal Code** the penalty for murder is death sentence. For a longtime the death penalty was mandatory sentence until 17/12/2017 when the Supreme Court in Muruatetu case ruled that the mandatory aspect of death sentence is unconstitutional, thus rendering death sentence to be a maximum sentence giving trial court latitude to consider other sentences other than death sentence.

It is in light of the aforesaid jurisprudential development, I go ahead to consider the appropriate sentence to accord to the accused the befitting sentence. Accused with others on the ground of allegation of theft of cow perpetrated by the deceased did beat, attempted to lynching using tyre, the deceased. They placed stinging nettle on deceased’s face and continued beating him until he died.

Earlier they had fractured his leg and were pulling him by the fractured leg. He must have experienced very excruciating pain before he died.

The accused and others subjected the deceased to a very cruel and inhuman treatment in gross violation of his fundamental rights and freedoms.

Deceased was killed without being accorded a hearing and subjected to death penalty for a cow allegedly stolen. The accused thus should also get a very severe sentence.

He has to be a lesson to people like him who thinks that they can take law into their hands and take away people’s lives.

Thus the court having noted that he has been in custody since 2017 and thus he is a first offender; He is therefore not to be awarded maximum sentence but a periodic sentence; Thus;

1. Accused will serve imprisonment for a period of 40 years to run from date of conviction 13/05/2021.

Right of appeal explained.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 14TH DAY OF JUNE, 2021.

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CHARLES KARIUKI

JUDGE