



**RE PUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT VIHIGA**

**CRIMINAL CASE NO. 21 OF 2021**

**REPUBLIC.....DIRECTOR OF PUBLIC PROSECUTIONS**

**VERSUS**

**AMOS MUSIEBE ALIAS JACKSON NGONYA.....ACCUSED**

**RULING**

1. The accused was convicted, on 31<sup>st</sup> July 2019, of the offence of murder, contrary to section 203, as read with section 204, of the Penal Code, Cap 63, Laws of Kenya, which exposes him to a penalty death.

2. A statement in mitigation was made on 18<sup>th</sup> September 2019, by his advocate, Mr. Matete. He stated that the accused was remorseful, for the deceased was his wife, and he, therefore, lost a loved one. They had children of tender years who were living with relatives. He was a first offender, and Mr. Matete prayed for leniency. The prosecution, through Ms. Kibet, stated that the offence committed was a serious one, which called for a deterrent sentence.

3. The court called for a pre-sentence probation report. An undated report was filed on 16<sup>th</sup> March 2021. It is generally unfavourable to the accused person. The community is still incensed with his actions, and does not favour him being given a non-custodial sentence, and is generally hostile to him being released.

4. I have considered the trial record and the judgment, and in particular the circumstances under which the offence was committed. The accused beat his partner, the woman he was living with, and with whom he had two children, viciously, inflicting upon her fatal injuries. It was not explained why that was so. The two had had a rather violent relationship. The offence, it would appear, was committed when both of them were drunk.

5. Taking everything into account, I am of the persuasion that the accused person herein, would not benefit from a non-custodial sentence. Under section 204 of the Penal Code, the punishment available for the offence, for which he was convicted, is death. However, in view of the decision in *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (*Maraga CJ & P, Mwilu DCJ & VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ*), with respect to mandatory sentences, and especially the death penalty, the court may consider other modes of punishment.

6. I am persuaded that the accused person herein would benefit from a custodial sentence. I accordingly sentence him to serve 25 years' imprisonment. There is a right of appeal to the Court of Appeal, exercisable within 14 days. The file shall hereafter be returned to the registry at Vihiga.

7. It is so ordered.

**DELIVERED DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 3<sup>RD</sup> DAY OF JUNE, 2021**

**W MUSYOKA**

**JUDGE**