

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HIGH COURT CRIMINAL CASE NO. 12 OF 2019

REPUBLIC.....PROSECUTION

VERSUS

MAGDALINE NDUKU KIIO.....1ST ACCUSED

ERICK KIIO KITHUKA.....2ND ACCUSED

SAMMY KIIO KITHUKA.....3RD ACCUSED

RULING ON SENTENCE

1. The three (3) accused persons herein have been convicted of two counts of murder contrary to section 203 as read with section 204 of the Penal Code.
2. I have been told by the defence counsel that the 2nd and 3rd accused persons are minors, and that the 1st accused person has a 4 year old child who is currently living with relatives.
3. The Prosecution Counsel on the other hand, has submitted that the 3rd accused person had another previous case in Kilungu Court for assault and he committed the present offence while on probation. I also note that Probation Officer's report shows that though court orders had been issued by the Machakos court, the three accused persons chose to disobey those restraining court orders and committed this offences.
4. Having been availed, perused and considered the Victim Impact Report dated 19th April 2021 prepared and filed by Sammy Munyasya, the Probation Officer – Makueni, it is clear to me from the report that the three accused persons showed an inclination to be violent and, even in the face of existing court orders regarding resolution of the land dispute, they proceeded to commit the offences.
5. I note that though counsel for the accused persons has said that the 2nd and 3rd accused persons are minors, the Probation Officers reports show that only the 2nd accused Sammy Kiiio Kithuka was said to be 15 years in 2019. The 3rd accused person was by then 19 years, and 1st accused person was 36 years old.
6. From the evidence on record, the offence was instigated by the 1st accused person who is the mother of the 2nd and 3rd accused persons and it was a premeditated offence of violence, violating existing court restraining orders.
7. I thus sentence the 1st accused Magdaline Nduku Kiiio to 25 years imprisonment on each count. The 2nd and 3rd accused Erick Kiiio Kithuka and Sammy Kiiio Kithuka will each serve 10 years imprisonment on each count as in my view, they are all adults now and were so convicted as adults. Sentences to run concurrently.

Delivered, signed & dated this 15th day of July 2021, in open court at Makueni.

GEORGE DULU

JUDGE