



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. 61 OF 2016

REPUBLIC.....PROSECUTOR

VS.

LUTINTANOI LEREO.....ACCUSED

RULING ON SENTENCE

1. **LUTINTANOI LEREO** (Lereo) was on 16th March, 2021, convicted of the offence of murder. That conviction was by *Justice C. Meoli*. The learned judge was transferred from the Kiambu High court and it is therefore my responsibility to rule on sentence of Lereo.

THE FACTUAL CONTEXT

2. On the fateful evening, *Leleo* and the deceased, **DAVID LKASIN LESUKAT** had reported on duty. They were both employed as guards at Pekenya Gas Company. They worked in the night shift which was between 6.00 pm to 6.00 am. Lereo and his other colleagues were each assigned their role on 10th February, 2015 by their superior. At 6.30pm an employee Ndichu of the Gas Company had not left the premises. At that hour, as he prepared to go home, on being alerted by exclamation of some people, he rushed and saw the deceased staggering and he saw him collapse. Ndichu noted that the deceased had a cut on the head and was bleeding. The deceased succumbed to his injuries while receiving medical treatment.

3. Lereo disappeared and deserted his duty. He was arrested the following day by members of the public and the police subsequently re-arrested him.

4. At the scene of the crime, the police recovered a sheath of a sword and a shirt. These items were identified as belonging to the Lereo.

5. The cause of death of the deceased was stated to be due to head injury due to sharp force trauma. The government analyst concluded the DNA generated from the deceased's blood matched with DNA generated from the blood stains of the shirt identified to belong to Lereo.

6. It is worth considering the observation of the trial court, as follows:-

“31. The deceased was slashed with a simi on the head, and so severely that the cut traversed the scalp, cracked the skull and penetrating into the brain. The cut measured 12 cm in length and the pathologist (PW4) explained that the space between the skull and brain measures about 2-3 cm and that evidence of bleeding and clotting revealed that the injury reached/affected the brain. Whoever inflicted this injury on the deceased had the intention to kill him or cause grievous harm in the terms of section 206(a) and (b) of the Penal Code. The force used, choice of weapon and body target of blow and actual injury inflicted make that apparent.”

7. The trial court was satisfied that Lereo was the person who inflicted those injuries on the deceased. The trial court on being satisfied that the prosecution's evidence met the required standard of proof proceeded to convict Lereo of murder.

ANALYSIS

8. In mitigation, Mr. Eleri, learned counsel for Leleo, drew the court's attention to the two probation reports, one was prepared to assist the court consider bail application whilst the second one is a pre-sentencing report. The court's attention was also drawn to the affidavit of Lereo. Learned counsel stated that Lereo is remorseful and because he has a young family, he was seeking leniency from this Court. That Lereo, in the period he has been in custody has been reformed. Learned advocate requested the court to consider non-custodial sentence.

9. Mr. Stephen Kasyoka prosecution counsel for DPP informed the court that Lereo is a first time offender.

10. Lereo addressed the court as follows:-

“The deceased was my friend. We worked together. I am remorseful. I request the court to consider me (sic) I had not intended to do that act.”

11. Lereo is comes from Laisamis Marsabit County. He is illiterate having not attended school at all. He approximates his age to be 30 years. He spent his childhood herding the family’s animals.

12. The Supreme Court in the case ***FRANCIS KARIOKI MURUATETU & ANOTHER VS. REPUBLIC (2017) eKLR*** declared unconstitutional the mandatory provisions of ***Section 204*** Penal Code which provides that “any person convicted of murder shall be sentenced to death.” This is what Supreme Court stated:-

“[59] We now lay to rest the quagmire that has plagued the courts with regard to the mandatory nature of Section 204 of the Penal Code. We do this by determining that any court dealing with the offence of murder is allowed to exercise judicial discretion by considering any mitigating factors, in sentencing an accused person charged with and found guilty of that offence. To do otherwise will render a trial, with the resulting sentence under Section 204 of the Penal Code, unfair thereby conflicting with Articles 25 (c), 28, 48 and 50 (1) and (2)(q) of the Constitution.”

13. It follows that this Court has discretion in sentencing one who is convicted of murder bearing in mind the guidelines discussed by the Supreme Court in that case ***FRANCIS KARIOKI MURUATETU*** (supra). Those guidelines were stated as follows:-

“GUIDELINES

...the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

(a) age of the offender;

(b) being a first offender;

(c) whether the offender pleaded guilty;

(d) character and record of the offender;

(e) commission of the offence in response to

(f) gender-based violence;

(g) remorsefulness of the offender;

(h) the possibility of reform and social re-adaptation of the offender;

(i) any other factor that the Court considers relevant.”

14. I have already stated Lereo’s age is estimated to be 30 years. He is a first offender. He is remorseful. My consideration of the evidence before court reveals there was no degree of planning of the offence. It seems to have been more spontaneous reaction to what Lereo informed probation officer, that he and the deceased were fighting over a phone charger which Lereo said belonged to him but the deceased refused to give it to him. It therefore seems that this was an impulsive killing of deceased which will militate in favour of Lereo. I will however consider that the purpose of sentencing is to contribute to the respect for law and maintenance of deterrence for others.

15. Lereo has been in custody since 26th February, 2015 todate. That is slightly over six years.

DISPOSITION

16. The fitting sentence for ***Lutintanoi Lereo*** is a sentence of 7 (seven) years. I therefore hereby sentence **LUTINTANOI LEREO** to serve 7 (seven) years imprisonment for the murder of **DAVID LKASIN LESUKAT deceased**. That sentence shall be calculated from 26th February, 2015, the date he was placed in custody pending his trial.

17. Orders accordingly.

RULING DATED AND DELIVERED AT KIAMBU THIS 6TH DAY OF JULY 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Ndege

Accused : present

For Accused: Mr. Njehu holding brief for Mr. Eleri

For **DPP:** Miss Kathambi

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE