



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KIAMBU

CRIMINAL CASE NO. 81 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

PATRICK GATHIRWA KIARIE.....ACCUSED

RULING ON SENTENCING

1. **PATRICK GATHIRWA KIARIE (Patrick)** was on 23rd March, 2021, convicted of murder of **PETER KAMENYA KIARIE** deceased. The deceased was brother to Patrick.

FACTS

2. Patrick lived together with other family members on the family land at Mukurwe village. On 2nd November, 2014, a brother to Patrick namely, **Gabriel Waweru Kiarie (Gabriel)** retired to bed at 8.30 pm. Soon thereafter, Patrick entered the room and made the statement:-

“Do you know I can kill you? Do you want to die?”

Patrick then stabbed Gabriel and ran away.

3. The following day **Ndungu Wainaina**, who knew the whole family of Patrick was on his way home when he came across Patrick and the deceased. The two were calling each other **“wa Ciku”**. When he was opening the gate, he heard footsteps then saw Patrick running away and he saw the deceased clutching himself saying:-

“He has stabbed me.”

4. The trial court, **C. Meoli, J.**, by the judgment of 23rd March, found that the prosecution had proved the charges against Patrick beyond reasonable doubt and therefore convicted him of murder.

ANALYSIS

5. I requested for a victim impact report which I have considered. I will reproduce parts of that report because it is relevant to the sentence I will pass against Patrick. The report shows that the mother of Patrick had this to say:-

“She is the mother to accused and the deceased. She is sad to have lost a child through the violence of her other child. She has come to terms with the situation at hand that she has lost another child in the accused because what he did was wrong and will probably be jailed for a long time. She always prays for the accused to reform.”

6. The son of Patrick was interviewed and the report shows as follows:-

“He is a son to the deceased and feels bitter that he lost his father when he was still a young man. He is still traumatized and views the accused as a danger to him, his family and the community at large.”

7. Three brothers of Patrick were interviewed and the report reflects as follows:-

“These are the brothers to the deceased and the accused. Gabriel Waweru Kiarie, who was also stabbed on the material day by the accused herein is still traumatized by the events of that day. The brothers are still bitter with their brother’s acts and perceive him as a dangerous person. This is because they do not understand how a person would turn so violent to a person related to him by blood. They are fearful for their lives if the accused were to be released from custody.”

8. Patrick filed an affidavit setting his mitigation. In that affidavit he stated that he is reformed, he has missed his family and that he has acquired various skills.

9. As I consider the fitting sentence of Patrick, I am compelled to cite the case of **REPUBLIC VS. GABRIEL MARI GAKUI (221) eKLR** as follows:-

“8. It is useful to consider what sentencing of an offender by the court means. This was discussed in the case R V PEARSON 2002 NBQB 218 (canLII) as follows:-

‘...sentencing is the public pronouncement of punishment administered by the authority of the court as trustee of the public’s confidence. It ought to be imposed in a way that applies the rule of law, tempered with justice, administered with the knowledge, good conscience, instincts and experience of the judge and guided where appropriate by persuasive or binding precedent. In my view, the essential purpose of sentencing is to maintain respect for the law by which society chooses to regulate itself, thereby ensuring the peaceful enjoyment, order and safety of its citizens. The community expects the court to enforce its standards, to denounce unlawful conduct and to deal firmly but fairly with those persons convicted of crime. In determining a fit and proper sentencing, well-recognized principles have come to be applied in this jurisdiction. The primary consideration is always protection of the public. In addressing that primary concern, the sentencing judge is obliged to ask whether such protection may best be achieved by specific deterrence of the offender, general deterrence of those similarly disposed, rehabilitation of the offender, or some combination thereof.’”

10. This is one case that the court needs, in sentencing, to show that it denounces unlawful conduct of Patrick. The conduct of Patrick has so traumatised members of his immediate family that, although Patrick has been in custody since 2014, that family is traumatised by the realisation that he might be released from custody.

11. Bearing the above in mind, I find and hold that the appropriate sentence for Patrick is 50 years imprisonment.

DISPOSITION

12. Patrick Gathirwa Kiarie is hereby sentenced to serve **50 (fifty) years** imprisonment for the murder of **Peter Kamenya Kiarie**, that sentence will be calculated from the date of incarceration from when he was placed in custody, that is from 20th November, 2014.

RULING DATED AND DELIVERED AT KIAMBU THIS 5TH DAY OF JULY 2021

MARY KASANGO

JUDGE

Coram:

Court Assistant: Ndege

Accused : Present

For DPP: Ms. Kathambi

For Accused Ms. Wambura holding brief for Mr. Njuguna

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE