



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MAKUENI**

**HCCRC. NO.98 OF 2017**

**(FORMERLY MACHAKOS HCCRC 3 OF 2017)**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**WAMBUA MUSYOKA *Alias* KIOKO.....ACCUSED**

**RULING ON SENTENCE**

1. The accused person herein has been convicted of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The Prosecuting Counsel Ms. Gitau has asked for imposition of the maximum sentence, as the deceased was a defenseless 8 year old child, whom the accused strangled and threw into a dam. Counsel added that the accused was a person of troublesome character, and had attempted to conceal his identity, and was not remorseful.
3. The defence counsel Mr. Hassan, on the other hand, in mitigation, submitted that the accused person, who was 42 years of age, had been in custody since 2017 and had reformed while in prison custody. Counsel added also that the accused person had expressed his wish to start a family, and asked the court to consider the period the accused had remained in custody during trial, in sentencing him.
4. Before considering the appropriate sentence to impose, this court ordered that the Probation Officer – Makueni file a pre-sentence report, and such report dated 29<sup>th</sup> June 2021 was filed in which it is stated as follows –

***“... the accused person has failed to accept responsibility for the offence as he continued to deny that he killed the deceased. Further his family made no effort to look for the bereaved family for consolation and reconciliation. In this view, the accused became hard for behavioral correction if at all he does not feel guilty of the offence; hence he is unsuitable for non-custodial management”.***

5. Having considered the circumstances of the case, the mitigating factors, and the pre-sentence report, I find that the accused person is not suitable for a non-custodial sentence. He also deserves a severe sentence as he is not remorseful. Guided by the principles set out in the Supreme Court case of **Muruatetu (2015) eKLR**, I will not pronounce the death penalty. I sentence the accused person to imprisonment for forty (40) years.

Right of appeal explained.

**DELIVERED, SIGNED & DATED THIS 6TH DAY OF OCTOBER 2021, IN OPEN COURT AT MAKUENI.**

.....

**GEORGE DULU**

**JUDGE**