



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL CASE NO. 7, 8 AND 11 OF 2020

CORAM: HON. R.E. ABURILL J

STATE.....PROSECUTION

VERSUS

MICHAEL WAHANDA ABIDHA.....1ST ACCUSED

BONIFACE OTIENO.....2ND ACCUSED

NICHOLAS OWAGA WAHANDA.....3RD ACCUSED

KELVIN OTIENO OGEJO.....4TH ACCUSED

KELVIN OTIENO ONJIKO.....5TH ACCUSED

RULING ON SENTENCE

1. On 16/9/2021, this court delivered judgment in this case finding the 2 accused persons herein Kelvin Otieno Ogejo and Kelvin Otieno Onjiko guilty of the information of Murder contrary to Section 203 of the Penal Code.
2. The two accused persons who are represented by Mr. Odongo advocate and Mr. Okello Advocate respectively, mitigated saying that they are first offenders and remorseful. The 4th accused stated that he has a young family and long sentence will render his family to hardship. That he was ready to change given lenient sentence. He also thanked the court for expediency and impartiality in this case. He stated that he has a wife and 2 children. The fifth accused person added in mitigation that he is a family man and sole breadwinner for his family of a wife and 2 children. He stated that he did not expect to be convicted of the offence. He prayed for a non-custodial sentence.
3. This court then ordered for Presentence reports which have been filed by Euphemia Kidwoli, Probation Officer on 12/10/2021.
4. In the said reports, the 5th accused person is said to be living a mysterious life in that he gave false particulars of his abode which could not be traced. In addition, the places he gave, the local administration know him not. A non-custodial sentence is not recommended.
5. As against the 4th accused person, the report states that he is also not suitable for non-custodial sentence.
6. I have considered the mitigation, the Presentence reports and the Judiciary Sentencing Guidelines. I have also considered the circumstances under which the offence of Murder was committed by the 2 accused persons and their accomplices. The offence of Murder, upon conviction, carries death sentence as stipulated in Section 204 of the Penal Code.
7. The accused persons had no reason to unlawfully kill the deceased and having planned to kill, they do not deserve the mercy of this court. They are dangerous human beings who should not be allowed to live in the society with others because they do not value life. Life is sacrosanct and no person has any right to take away the life of another, except by law provided and or under the Constitution.
8. Considering the circumstances under which the deceased was brutally murdered, I find that the appropriate sentence is to place the two (2) accused persons behind bars for life, noting that the person they intended to murder is still alive and that the accused are a serious threat to him and his family.
9. Accordingly, the two (2) accused persons herein Kelvin Otieno Ogejo and Kevin Otieno Onjiko are hereby sentenced to serve life imprisonment.

10. Right of Appeal 14 days.

11. I so order.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 13TH DAY OF OCTOBER, 2021

R.E. ABURILI

JUDGE

In the Presence of:

Accused persons: Kelvin Otieno Ogejo and Kelvin Otieno Onjiko

Ms. Otieno Advocate h/b for Mr. Odongo for 4th Accused person

Mr. Okello Advocate for 5th Accused person

Ms. Owenga Advocate for Victim's family

Mr. Kakoi, Principal Prosecution Counsel for State

Court Assistants: Modestar and Mr. Mboya