



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. 9 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

JUDY WAMBUI MUNGAI.....1ST ACCUSED

MICHAEL GITHAE MATHENGE.....2ND ACCUSED

RULING ON SENTENCE OF 2ND ACCUSED MICHAEL GITHAE MATHENGE

1. **MICHAEL GITHAE MATHENGE**, hereinafter **Michael**, pleaded guilty to the offence of accessory after the fact of murder contrary to **Section 222** of the Penal Code. The particulars of the offence are that:-

“Michael Githae Mathenge on the 26th day of January, 2019 at Four Ways Estate, Kiambu Sub-county within Kiambu County assisted Judy Wambui Mungai to dispose of the body of Mary Wambui Kamangara in order to enable her escape punishment knowing that the said Judy Wambui Mungai was guilty of the offence of murder.”

FACTUAL BACKGROUND

2. **JUDY WAMBUI MUNGAI** is the first accused hereinafter, **Judy**. She is charged with the offence of the murder of **MARY WAMBUI KAMANGARA Deceased**. She pleaded not guilty to the offence and her trial is yet to commence. The deceased body was found at a dam on 27th January, 2019. The facts which Michael confirmed to be true as he pleaded guilty was that, Michael at the request of Judy, went to Judy’s residence at Four Ways Estate at around 1.00 A.M. When Michael arrived there, Judy placed the deceased’s body into deceased’s car. Judy drove the deceased’s car, disposed of the deceased’s body at the shore of a dam, Mugutha dam and before abandoning deceased’s car, Judy disposed of beddings used to wrap deceased’s body and a baby car seat. All the while, Michael was driving another car following Judy. Judy abandoned deceased’s car at Githunguri. Judy boarded the vehicle being driven by Michael and Michael drove Judy back to her residence in Four Ways Estate.

MITIGATION

3. The learned counsel for Michael stated in mitigation that credit should be given to Michael for his willingness, at the very initial stages of his contact with police, of admitting his involvement in the offence. Learned counsel stated that Michael gave details to the police which enabled the police to unravel the crime. That in so doing, Michael assisted the police and that in pleading guilty he has also saved Judiciary precious time.

4. Michael is a father of two daughters and the sole bread winner of his family. It was submitted by learned counsel that Michael’s involvement in this case, and the publicity associated with it, ruined his car-hire business but he has now started another business of running a shop to earn an income in order to provide for his family.

5. The learned advocate for Michael requested the court, in sentencing him to exercise its discretion in favour of the accused, Michael, by granting him non-custodial sentence.

6. The victim’s family, through the victim’s impact assessment report request the court to be lenient to Michael for having assisted the police.

ANALYSIS

7. Following the arrest of Michael, he was produced before court in February, 2019. He was charged, alongside Judy, with the offence of

murder of **MARY WAMBUI KAMANGARA Deceased**. He remained in custody up to June, 2019 when he was released on bond. He entered into plea bargain with Director of Public Prosecution and has now pleaded guilty to the offence of accessory after the fact of murder contrary to Section 222 of the Penal Code.

8. It is without doubt that in pleading guilty, Michael has avoided the uncertainties associated with trial and has indeed saved judicial time. This will be taken into credit for Michael. The court in considering the sentence for Michael will be guided by the principal stated in the case **REPUBLIC VS. PETER LEKUPE (2017) eKLR** thus:-

“7. The court in considering the accused sentence will bear in mind the holding of the case PUBLIC PROSECUTOR V RAPRAP [2011] VUSC 89 where His Lordship Spear J. said:-

‘This sentence must hold you fully accountable for what you have done; it must denounce your conduct and promote in you a sense of responsibility for your activities.’”

9. Bearing the facts related in this case by the prosecution and the mitigations made on behalf of Michael, I will sentence Michael to one-year imprisonment which sentence will be suspended for a period of 1½ years as provided under section 15 of the Criminal Procedure Code. The section provides:-

“(1) Any court which passes a sentence of imprisonment for a term of not more than two years for any offence may order that the sentence shall not take effect unless during the period specified by the court (herein called the “operational period”) the offender commits another offence, whether that offence is punishable by imprisonment, corporal punishment or by a fine.

(2) Where the offender is convicted of an offence during the operational period the sentence for the first offence in respect of which the offender was convicted under subsection (1) shall thereupon take effect.

(3) Where under subsection (2) the sentence passed for the first offence under subsection (1) takes effect the sentence passed for the subsequent offence shall run consecutively to the sentence passed for the first offence.”

CONCLUSION

10. **Michael Githae Mathenge**, this Court holds you fully accountable for the offence you pleaded guilty to. This Court in sentencing you wishes to convey to you the fact that it denounces your conduct in the commission of the offence contrary to **Section 222** of the Penal Code.

11. **Michael Githae Mathenge** you are hereby sentenced to 1 (one) year imprisonment, which sentence is suspended for 1½ years as provided under **Section 15 Cap 63**.

12. I now therefore order **Michael Githae Mathenge** to be released from custody unless otherwise lawfully held.

RULING DATED and DELIVERED at KIAMBU this 16th day of NOVEMBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Maurice

For DPP: Kathambi

For 1st Accused: Ms. Ajiambo

For 2nd Accused: Mr. Ogutu

1st Accused: Present

2nd Accused: Present

COURT

RULING delivered virtually.

MARY KASANGO

JUDGE