

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

CRIMINAL CASE NO. 6 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

SIMON MURAYA GACHAU.....ACCUSED

SENTENCE

1. The accused was adjudged guilty of the grave offence of *murder*.
2. The felony attracts the sentence of death. However, following the landmark decision of the Supreme Court in *Francis Karioko Muruatetu & another v Republic*, Consolidated Petitions Nos. 15 & 16 of 2015 [2017] eKLR, the *mandatory* nature of the death sentence as provided for under Section 204 of the **Penal Code** was declared unconstitutional. This did not outlaw the death penalty, but it left the court with discretion to impose a lighter sentence.
3. I have considered the circumstances surrounding this offence. The accused and deceased were cohabiting together in Murang'a. Following a domestic tiff, he stabbed the deceased multiple times with a fork jembe on the head, back and leg. He then vanished from the scene and was only arrested seven months later in Nairobi. The deceased died from external bleeding.
4. I have also taken into account the mitigation tendered by his counsel. The accused is a first offender and has expressed genuine remorse for his actions.
5. The rule of thumb is that sentence *should be commensurate to the moral blameworthiness of the offender* but also guided by the *nature and gravity of crime*. Justice in this case calls for a custodial sentence. Doing the best that I can, I sentence the accused to ten (10) years imprisonment. The period served by the accused in custody from the date of his arrest on 3rd March 2016 to date shall be *deducted* from this sentence.
6. The accused has a right of appeal to the Court of Appeal within 14 days and as per the Rules of that Court. A copy of the proceedings, judgment and sentence shall be supplied to him immediately.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 14TH DAY OF DECEMBER, 2021

KANYI KIMONDO

JUDGE

Sentence read in open court in the presence of:

The accused.

Ms. Muriu for the Republic.

Ms. Dorcas Waichuhi & Ms. Susan Waiganjo, Court Assistants.