



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL (MURDER) CASE NO. 53 OF 2011

REPUBLICPROSECUTOR

VERSUS

SAMMY KIMEU KIOKOACCUSED

SENTENCE

1. Vide the judgement dated 18.9.2019 **SAMMY KIMEU KIOKO** was found **GUILTY** of the offence of murder contrary to section 203 as read with section 204 of the Penal Code and convicted accordingly.
2. The penalty for such an offence is the automatic death sentence. However I am alive to the fact that pursuant to the decision of the Supreme Court in **Francis Karioko Muruatetu & Anor v R (2017) eKLR**, which found that the mandatory death penalty regime was unconstitutional I need to make a decision that is in line with the said case.
3. The prosecution is represented by the Mr Machogu, whereas the defence is represented by Mr Mulei. Both counsels for the parties ably presented their oral submissions on 16.10.2019.
4. Defence counsel submitted that the accused is very remorseful for the murder and added that this was a crime of passion that was regrettable and that there are three children who need parental care. It was counsel's submission that the convict had been in custody since 2011 and had undergone rehabilitation whilst in custody and that the family of the deceased have expressed desire to allow compensation and for a reunion hence the convict be released. It was submitted that the eight years in remand ought to be considered.
5. Counsel for the prosecution submitted that the family of the deceased have suffered and that the accused should undergo rehabilitation whilst in prison hence a lengthy custodial sentence is appropriate.
6. Defence counsel in rejoinder submitted that the matter had been ongoing since 2011 and that the family of the deceased ought to have healed by now since they are willing to enter into negotiations for compensation. Learned counsel reiterated his prayer for a non-custodial sentence.
7. A perusal of the probation officers report indicated that the convict is a 56 year old who attended school up-to class three in 1971 and sat CPE in 1983 but did not proceed with secondary education due to financial constraints. It was reported that he had a history of peaceful coexistence in his youthful age. However his involvement in traditional healing practice made him to behave in a paranoid manner. It was reported that he had three children and he loved singing. It was reported that the family of the deceased are bitter with the convict and the negative effect of the death of the deceased included hypertension suffered by her mother and a stroke suffered by her father. However they expressed a wish for compensation for loss of their kin. The community reported that the convict did not live a peaceful life with the deceased and that the family members were of the view that the convict undergoes rehabilitation before he reunites with them.
8. In sentencing the convict the following factors/reasons are considered:-
 - a. The case of **Francis Karioko Muruatetu & Anor v R (2017) eKLR**.
 - b. All the mitigating factors submitted by both counsels for the prosecution and the convict. Both counsels presented convincing arguments which have ably guided me to pass an appropriate sentence against the convict.
 - c. The Judiciary Sentencing Policy Guidelines, particularly paragraph 23.7.
9. For special emphasis, I have also considered the following factors:-

a. The convict was convicted of murder.

b. From the facts of the case and the way the deceased was killed, *the accused person was said to have hit the deceased with a hammer on the head that is a sensitive part of the body.*

c. There are no established previous records of the convict.

d. The convict has been in remand since 2011 before conviction which period I have taken into account in passing a sentence against him.

10. The evidence tendered indicated that the accused hit the deceased on the head with a hammer killing her on the spot. He did not even bother to rush her to hospital as he merely covered her with a bed-sheet and took off with the children. It transpired from the pre-sentence report that some of the children were traumatized and are yet to recover from the effects of the incident. Again the deceased's parents suffered bouts of stroke over the incident. Finally it was revealed that the accused requires custodial rehabilitation before being allowed to rejoin the society. I am satisfied that a custodial sentence is merited in the circumstances.

11. Accordingly, therefore, I make a finding that the convict in this case deserves an appropriate sentence of imprisonment. The defence have urged me to consider the period spent in custody and release the accused. However I find that the justice of the case demands that a custodial sentence is appropriate. In **Jonathan Lemiso Ole Keni v Republic (2018) eKLR** where the appellant shot a person without any provocation, the court imposed a sentence of 30 years' imprisonment. In **John Ndede Ochotho alias Obago v Republic (2018) eKLR**, the Court of Appeal upheld a sentence of 30 years in a case of murder where the appellant assaulted the deceased several times causing his death. Thus, taking into account the time that the convict spent in remand before conviction, I would have sentenced the convict to 30 (thirty) years imprisonment, but the said period the convict spent on remand before conviction must be factored into.

12. Therefore, I sentence the accused to 21 years imprisonment from the date of conviction.

It is so ordered.

Dated and delivered at **Machakos** this 15th day of **January 2020**.

D. K. Kemei

Judge