

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL CASE NO. 35 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

LIZA DAINA WANJA WANJIRU.....ACCUSED

RULING ON SENTENCE

1. The accused has been found guilty and has been convicted of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code;
2. The mandatory sentence for murder under the Penal Code is death; the Supreme Court has held that the mandatory nature of the death penalty to be unconstitutional as it deprives an accused person the right to mitigate and also takes away the trial court's jurisdiction to exercise its discretion to determine whether the death penalty is deserved and also to make a determination of the appropriate sentence from the facts and circumstances of the case; refer to **Francis Karioko Muruatetu and Another vs Republic [2017]eKLR**; in line with this authority counsel for the accused was therefore invited to mitigate on behalf of the accused;
3. Counsel for the accused urged this court to take into consideration that the accused has two young children who are wholly dependent on her as she is the sole bread winner; that the accused is a first offender; and also urged this court to consider the fact that from the circumstances of the case the accused had tried to save the life of the deceased by rushing him to hospital;
4. The State in response submitted that there was a life lost prematurely due to the unlawful act of the accused; the injuries were intense and the sole purpose was to end the life of the deceased; that she had tried to conceal the murder and had interfered with the crime scene;
5. The accused was not a first offender in that while this matter was still proceeding the accused was charged with the offence of forgery and obtaining money by false pretense and was duly convicted of the offence and given a custodial sentence of four (4) years which she was currently serving;
6. Counsel prayed that the accused be given the mandatory sentence.

ANALYSIS

7. It is the duty of this court to impose a sentence that meets the facts and circumstances of the case; this court has considered the full circumstances and the gravity of the offence in its judgment dated the 19/12/2019; the deceased was brutally stabbed to death and sustained injuries to which he succumbed to even after being rushed to hospital by the accused;
8. This court has taken into consideration the mitigation on the personal circumstances of the accused where she has expressed that she is the mother of two very young is not persuaded children and the sole bread winner;
9. The aggravating circumstances are that the crime committed was heinous as the accused murdered her very own spouse and in trying to cover up her actions interfered with the scene of crime; the accused was also not remorseful as she had omitted to address the court on this factor in her mitigation; the accused is also not a first offender and is currently serving a four (4) year custodial sentence;

10. This court concludes that the accused is not deserving of any leniency and a custodial sentence of a term of thirty (30) years is found to be an appropriate sentence.

Orders accordingly.

Dated, Signed and Delivered at Nyeri this 6th day of February, 2020.

HON.A.MSHILA

JUDGE