

REPUBLIC OF KENYA ‘

IN THE HIGH COURT OF KENYA

AT KISII

CORAM:OUGO J

CRIMINAL CASE (MURDER) NO. 35 OF 2018

REPUBLIC.....PROSECUTION

VERSUS

ELIPHES MUNYUA OMUGO.....ACCUSED

SENTENCING

1. **Eliphes Munyua Omugo** has been convicted of the murder of Hazard Mimanga. The law provides that one who is found guilty of murder shall suffer death. However, the Supreme court in the case of *Francis Karioko Muruatetu & Another vs R (2017) eKLR* declared that the mandatory death sentence is unconstitutional.

2. The accused is a first offender as no records of a previous conviction was tendered before this court. The accused in mitigation states that he is remorseful he is 25 years old and is newly married. That he is a first offender and that he seeks reconciliation with the family of the complainant. He pleads with the court that he be given a non-custodial sentence. The probation report is favourable and recommends probation. The mother and grandfather of the deceased have sought compensation and asked the court to sentence the accused.

3. I have considered the circumstance of this case, a baby was born and was murdered in a manner that was cruel. In sentencing the accused, I have considered the sentencing principles. Though the accused is a first offender in my view he does not deserve a non-custodial sentence. I therefore sentence the accused **Eliphes Munyua Omugo** to ten years' imprisonment. He has a right of appeal within 14 days.

Dated, signed and delivered at KISII this 16th day of July 2020.

R.E. OUGO

JUDGE

In the presence of;

Accused in person

Mr. Mainga For the accused person

Mr. Otieno Senior Prosecution Counsel office of the DPP

Mr. Ogechi Evans Court Assistant