



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE NO. 70 OF 2016

REPUBLIC.....-PROSECUTOR

VERSUS

DENNIS KIPKOECH.....-ACCUSED

SENTENCE

1. The Accused Dennis Kipkoech was convicted for the offence of Murder on the 31/10/2019. The particulars of the offence are that on the 6/12/2016 at Ingobor, Kapkures Location in Nakuru West, he murdered Rose Awori, **Contrary to Section 203 as read with Section 204 of the Penal Code. Section 204** provides for the punishment upon conviction for the offence of Murder as death. It is a mandatory sentence.

2. However, the **Supreme Court in Petition No. 15 of 2015 Francis Karioko Muruatetu & another Vs. Republic (2017) e KLR, in interpreting Section 204 held, at paragraph 48 that;**

“Section 204 of the Penal Code deprives the court of the use of Judicial discretion in a matter of life and death. Such law can only be regarded as harsh, unjust and unfair. The mandatory nature deprives courts of their legitimate jurisdiction to exercise discretion not to impose the death sentence in appropriate cases. Where a court listens to mitigating circumstances but has nevertheless, to impose a set sentence, the sentence imposed fails to conform to the tenets of fair trial that accrue to accused persons under Article 25 of the constitution; an absolute right---”

3. Before sentencing, the accused requested for a pre-sentencing report to be prepared. It was prepared and filed on the 9/3/2020. Ms. Kerubo Advocate for the accused tendered mitigation on behalf of the accused. I have considered both the report and the mitigating factors.

Section 329 of the Criminal Procedure Code provides that

“The court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed----”

It is upon the above that I have taken into account the evidence, the nature of the offence and the pre-sentence report in order to arrive at an appropriate sentence.

4. The accused committed the heinous offence at the age of twenty (20) years. He is now 24 years old.

The **Supreme Court in the Muruatetu Case (Supra)** set some guidelines with regard to mitigating factors upon conviction on a murder charge:

- a) Age of offender.***
- b) Being a first offender.***
- c) Whether offender pleaded guilty***
- d) Character and record of the offender.***
- e) Commission of the offence in response to gender based violence.***
- f) Remorsefulness of the offender***

g) The possibility of reform and social re-adaptation of the offender

h) Any other factor that the court considers relevant.

5. I have also considered the objectives of sentencing as set out in the **Judiciary of Kenya Sentencing Policy guidelines:**

- 1) **Retribution:** To punish the offender for his/her criminal conduct in a just manner
- 2) **Deterrence:** To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
- 3) **Rehabilitation:** To enable the offender reform from his criminal disposition and become a law abiding person.
- 4) **Restorative Justice:** To address the needs arising from the criminal conduct such as loss and damages.
- 5) **Community Protection:** To protect the community's condemnation of the criminal conduct.

6. The accused stated to be remorseful, and sought forgiveness from the deceased's family. He further stated that he has fully reformed in the four years he has been in custody. He pleaded for a non-custodial sentence. However, the pre-sentence report speaks otherwise of the accused's conduct, before the commission of the offence.

He is a school dropout at primary class one. He indulged in illicit drugs that may have caused him to commit the offence.

7. The victim's family is still very bitter about their loved ones loss of life. It is yet to heal from the trauma. It is not favourable report for non-custodial sentence.

8. The accused's actions that terminated an innocent life was not warranted. It was heinous and extremely selfish. Rejection by the deceased marriage proposal by the accused was not a sufficient reason to kill her. He decapitated her head from her body inside his house where he lived alone.

It is evident that at the time of commission of the offence, the accused was under the influence of illicit drugs. The accused had no previous criminal record. I have considered the relevant factors. I am persuaded that a non-custodial sentence is not appropriate in the circumstances.

9. I have also considered the period of four years the accused has been in custody since December 2016.

For the foregoing, I sentence the accused to thirty (30) years imprisonment.

Right of Appeal within 14 days explained.

DELIVERED, SIGNED AND DATED ELECTRONICALLY AT NAIROBI THIS 8TH JULY, 2020.

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J.N. MULWA

HIGH COURT JUDGE.