



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**HIGH COURT CRIMINAL CASE NO. 61 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**BBOSA GIANT.....ACCUSED**

**RULING ON SENTENCE**

1. The accused was convicted for the offense of murder contrary to Section 203 as read with Section 204 of the Penal Code the particulars of which were that on the 14<sup>th</sup> day of July 2014 at muthurwa estate within Nairobi County murdered **BAGANY ABDU**
2. The court is now called upon to pass an appropriate, just and adequate sentence there on taking into account the Supreme Court decision in the case of **FRANCIS KAROKI MURUATETU** where the court outlawed the mandatory nature of the death sentence as provided for under Section 204 of the Penal Code.
3. In compliance with the said decision and as provided for in the Judiciary Sentencing Policy Guidelines, the court called upon the convict to offer his mitigation, which was done by way of written submissions and high-lightened by Mr. Omondi at the sentence hearing.
4. It was submitted that the convict was a first offender with no known previous criminal record which should be taken into account as was held in the case of **ABDUL JARSO WARIO & ANOTHER v REPUBLIC [2009] eKLR** where the court held that maximum sentence should not be imposed on a first offender and any such sentence so imposed will be manifestly excessive.
5. It was further submitted that he was of impeccable character aged about 33 years at a productive youthful age who should be given an opportunity to use his energy to make a living and support his family in Uganda. It was stated that he was remorseful having caused the death of his friend whom he was living with as a brother.it was contended that he had spent six years in remand prison which had served as a punishment and lesson.
6. It was finally submitted that his relatives were willing to accept him back and the court was urged that in view of the Covid 19 pandemic the convict should be given non-custodial sentence as part of the measures recommended to decongest prisons and that in line with the case of **JONATHAN LEMISO OLE KINI v REPUBLIC [2018] eKLR** and **JULIUS MWITA RANGE V REPUBLIC [2003] eKLR** the court should consider the mitigating factors in arriving at an appropriate and befitting sentence.
7. Mr. Okeyo for the State submitted that the accused was a Ugandan national who should be treated as a first offender since no previous record was obtained against him. It was stated that there was no record of him being a threat to any person and since he was willing to return to Uganda, having been in remand custody he should be given a non-custodial sentence.
8. The convict stated that he had become a gospel singer while in custody and though he had a wife in Kenya he was willing to go back to his country of Uganda should the court give him non-custodial sentence.
9. For record purposes, this sentence was passed during the Covid 19 pandemic and therefore the court did not have the benefit of the presentencing report as recommended in the Sentencing Policy Guidelines. I have however taken into account the mitigation by the accused, the fact that he had been in remand custody for a period of seven years weighed against the sentencing objectives which are:

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/her 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 by incapacitating the offender.
- 6) **Denunciation:** to communicate the community's condemnation of the criminal conduct.

10. I have noted that the accused was at the end of his trial and even when called upon to offer his mitigation, economical with the fact as to what let him to kill the deceased in the manner he did. Having noted that the same is willing to go back to his country of origin and further having taken into account the fact that the deceased was his fellow Ugandan, and having taken into account his submissions and the authorities in support there and the age of the convict and his conduct when he was in remand custody where he embraced the Christian faith and became a gospel singer and a "photocopy" of a preacher as evidence by him preaching to the court by quoting Proverbs 19:17 to the effect that any mercy shown to him will be likened to lending to God, I will sentence the accused to a term of ten (10) years with effect from 30<sup>th</sup> July, 2014 when he took plea of which the last three (3) years thereof will be served on probation during which period the probation officer shall facilitate his repatriation to Uganda.

11. The accused has a right of appeal on both conviction and sentence while the State has a right of appeal on sentence and it is ordered.

**DATED, SIGNED and DELIVERED at Nairobi this 2<sup>nd</sup> day of July, 2020 through Microsoft Google Teams.**

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**J. WAKIAGA**

**JUDGE**

**In the presence of: -**

*Ms Ogweno for the State*

*Mr. Oundu for the Accused*

*Accused present*

*Court Assistant - Karwitha*