



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE NO. 94 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

MARY ATAI MUNG'AU.....ACCUSED

SENTENCE RULING

1. In a judgment dated 28/06/2018, the Honourable Lady Justice Maureen Odero convicted Mary Atai Mung'au ("Accused Person") of the offence of murder contrary to section 203 as read together with section 204 of the Penal Code. At the time the judgment was delivered on 06/07/2018, Lady Justice Odero had left the Station. It became incumbent on me to conduct the sentence hearing.

2. The Accused Person was charged with killing, with premeditation, Paul Kituri ("Deceased"). The details of the offence are contained in the judgment and the Trial Court record. The Deceased and the Accused Person checked into a hotel room together. It was Royal Spring Annex Hotel in Nakuru, Room No. 16. The Deceased was alive and well when they went in. By morning, he was dead. The doctor testified that he died of blunt force trauma on the head leading to "scalp bruising brain contusion and increased intra-cranial pressure."

3. During the sentencing hearing, a member of the family of the Deceased appeared and addressed the Court under oath. He was Simon Koech, a brother to the Deceased. He expressed anguish on behalf of the family at the loss of their brother. He pointed out that the Deceased left a wife and two children who are now suffering. He was the family's hope and now he is gone. He told the Court that the children were schooling in private academies which the family can no longer afford; they have resorted to public schooling. He strongly asked the Court to consider a life sentence for the Accused Person.

4. Mr. Chigiti, State Counsel, also thought that a very stiff sentence was called for given the family's sentiments and the amount of force used to kill the Deceased according to the Post-mortem form.

5. On her part, Ms. Moenga mitigated on behalf of the Accused Person. She told the Court that the Accused Person was a first offender who had never fallen afoul of the law. She is, also, said Ms. Moenga remorseful. Ms. Moenga asked for leniency because the Accused Person is an only mother to her children and her mother. She has also now trained in computers and restaurant services and if given non-custodial sentence, she can take of herself.

6. In her judgment, Justice Odero expressed deep puzzlement about the case in these words:

This is a case that has greatly puzzled me. The behavior of the Accused was not consistent with one who had a guilty mind. It was the Accused who alerted the watchman that the Deceased had failed to wake up. The Accused did not abscond from the scene. She remained at the hotel and was there the next morning when PW1 and PW2 arrived. The witness stated that they saw no visible injuries on the body of the Deceased.

7. Having read the entire record of the proceedings and the judgment, and having observed the Accused Person during sentence hearing, I share Justice Odero's puzzlement. There is no obvious motive to the murder here. And, as Justice Odero pointed out, the Accused Person did not display any characteristics of a guilty mind. Yet, because she alone had the opportunity to kill the Deceased; and because she did not give any other credible alternative explanation, she has now been convicted of the offence of murder.

8. Both Mr. Chigiti, the State Counsel, and the family of the Deceased are persuaded that the circumstances here point to an aggravated murder that should attract the stiffest sentence below the death penalty.

9. I have considered all the mitigating circumstances in this case. First, the conduct of the Accused Person in remaining at the scene, calling for help, and refraining from absconding even while she had the chance to must be credited as a mitigating circumstance. Second, the Accused Person is demonstrably remorseful. Third, she is youthful. Fourth, she has young children who depend on her. Fifth, she is a first offender. Sixth, she has shown capacity for reform while in custody during the pendency of her trial. Lastly, I have considered the circumstances of this murder as not involving any depraved or gratuitous use of violence despite Mr. Chigiti's invitation for me to do so. I

think we simply might never know what happened in this case.

10. On the other hand, I have considered the sentiments of the family of the Deceased.

11. Considering all these factors, and considering that the Accused Person has been in custody since 15/09/2014, a period of more than four years, it is my view that a sentence of ten years will be an appropriate one for this crime. The ten years sentence will be served as follows:

a. Seven years will be served in custody commencing today; and

b. Three years will be served under probation commencing on the date the Accused Person will be released from custody.

12. Orders accordingly.

Dated and delivered at Nakuru this 15th day of January, 2019

JOEL NGUGI

JUDGE