

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 84 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

NAHASHON MUTUA.....ACCUSED

RULING ON SENTENCE

In a judgment delivered on 13th December 2018, Nahashon Mutua, the accused herein was found guilty of the murder of Martin Koome Manyara contrary to section 203 as read with section 204 of the Penal Code. The offence was committed on 20th of December 2013. The circumstances of that death are better explained in that judgment. After the delivery of the judgment, counsel for the accused, Mr. Mwangi, sought time to have a report from the probation office giving the social circumstances of the family life of the accused and other factors on his personal life. At the same time, Mr. Mbanya, counsel for the family of the deceased sought time to present the victim impact statement. These requests were granted by the court. The victim impact report was filed on 18th December 2018 while that from the Probation Office was filed on 15th January 2019 after which case was set down to receive the mitigation of the accused on 7th February 2019 before sentencing.

In a mitigation presented to this court by Mr. Mwangi, counsel for the accused on his behalf, the accused has maintained that he is innocent. He maintains that he did not kill the deceased and that the death of the deceased was caused by cell mates at the Ruaraka Police Station. He sympathizes with the family of the deceased whose lives have been adversely affected by the death of the deceased and states that he too is a victim of the death of the deceased given the negative effect this case has had on his personal life as a career police officer and on the lives of his family members.

The accused told the court in mitigation that he has had an illustrious career with the National Police Service where he served for 14 years with a clean record of selfless service to the Government and the people of Kenya and that he rose to the responsible position of OCS. He submitted in mitigation that the evidence presented in court in support of this case is of a kind that raises serious doubts as to whether the accused committed the offence he was tried for and that this is a case whose outcome could have gone either way. Counsel urged that this court considers a non-custodial sentence.

I have taken time to carefully read and appreciate both reports from the probation officer and the victim impact statement. I have considered and taken into account the contents of the two reports. I have also considered the mitigation of the accused. I have noted that there are no previous criminal records against the accused tabled before this court. It is an irrefutable fact that the death Martin Koome Manyara has deprived his family a bread winner, a husband and a father. This fact has changed their lives forever. There is little anyone can say or do to cushion the bereaved family against the pain caused by the death of their family member. It is only acceptance and time that will heal their pain.

The law under Section 204 of the Penal Code provides the penalty for murder as death. I am alive that this court has discretion to meet out a sentence other than death. It is however not lost to me that each case must be considered on its own peculiar circumstances. I am alive to the pain the deceased suffered before he succumbed to the injuries he had sustained which this court determined were caused by the accused before the court. I have taken into account the submission by the accused in his mitigation that the evidence in this case leaves some doubts. A determination has been made by this court that the evidence presented by the prosecution in this case has proved beyond reasonable doubt that the accused caused the death of the deceased. That determination settles the issue now being raised. After that determination, this court has laid down its tools as far as this case is concerned. The same case applies to the submission that this case be subjected to fresh investigations to determine whether this court has tried the correct offender. It is my belief that the prosecution had fully investigated this case before the accused was charged. Indeed as stated above, this court has made a determination that the case against the accused has been proved to the required legal standards. It is my view as the trial court that this case has been subjected to due process this court and the only recourse now is to take the matter on appeal to the next court in the hierarchy.

Death penalty is the optimum sentence provided by the law for the offence of murder. Having applied my mind to the peculiar circumstances of this case as expounded in my judgment delivered on 13th December 2018 and after considering the painful death the deceased was subjected to and the inhumane treatment he received even after he was fatally wounded, it is my considered view that the befitting sentence in this case is death. Therefore, I hereby sentence Nahashon Mutua to death as provided under Section 204 of the Penal Code. He shall suffer death in the manner authorized by the law. I also inform the accused that he has a right to appeal against the conviction and this sentence which right should be exercised within 14 days from today's date. Orders shall issue accordingly.

Delivered, dated and signed this 14th day of February 2019.

S. N. MUTUKU

JUDGE