



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HIGH COURT CRIMINAL CASE NO 64 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

SAMUEL OTIENO FRANCIS.....ACCUSED

SENTENCE

1. The convict **SAMUEL OTIENO FRANCIS** was found guilty of murder contrary to **Section 203** as read with **Section 204** of the **Criminal Procedure Code**. The court is now called upon to determine an appropriate and just sentence taking into account the Supreme Court decision in **FRANCIS KARIOKO MURUATETU & ANOTHER v REPUBLIC [2017] eKLR** where the mandatory nature of death sentence in capital offences was found to be unconstitutional.

2. The objectives of sentencing as per the Judiciary Sentencing Policy Guidelines 4.1 are as follows:-

- 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.*

3. The Indian Supreme Court has for the past decade moved between the principle of proportionality as just desert balanced with deterrence sentence. In the case of **SWAMI SHRADD ANANDA & MURALI MANOHAR MISHRA v STATE OF KARNATAKA [2008] 13 SCC 767** the Supreme Court stated:-

“The inability of the criminal justice system to deal with all major crimes equally effectively and the want of uniformity in the sentencing process by the court lead to a marked imbalance in the end result. On the one hand there appears a small band of cases in which the murder convict is sent to the gallows on confirmation of his death penalty by the court and on the other hand there is a much wide area of cases in which the offender committed much similar or a far more revolting kind is spared his life due to lack of consistency by the court in giving punishment or worse the offender is allowed to slip away unpunished on account of deficiencies in the criminal justice system. Thus the overall larger picture gets asymmetric and lop sided and presents a poor reflection of the system of criminal administration of justice.”

4. In **DHANANJOY CHATTERJEE DHANA v STATE OF WEST BENGAL [1994] 2 SCC 22** the court on the other hand observed:-

“Today there are admitted disparities some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished thereby encouraging the criminal and in the ultimate make justice suffer by weakening the system's credibility. Though it is recognized that punishing the wrong doer is at the heart of criminal justice delivery in our country it is weakest part of the administration of criminal justice.”

5. It is therefore clear that any punishment imposed should be justified by the purpose and the goal with corrective strategy as balanced with deterrence being the basis for assessing adequate sentence as was stated by the Supreme Court of India in **HAZARA SINGH v RAJ KUMAR [2013] 9 SCC 516** thus:-

“The punishment awarded should be directly proportionate to the nature and the magnitude of the offence. The benchmark of proportionate sentencing can assist the judges in arriving at a fair and impartial verdict. The court further observed that the cardinal principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence.” (Emphasis added)

6. In this matter the court called for Pre-sentencing report in which it was stated that the offender dropped out of school in Form two (2) due to financial constraints and from 2005 to the time of his arrest in 2014 was engaged as a casual labourer at construction sites. In the report he offers a defence which he did not tender before court that while collecting money for the funeral expenses of his dead brother the deceased provoked him by saying that they don't usually contribute towards the funeral expenses of thieves and robbers and that he should collect the money from his friends or in the alternative his mother should burn the body and eat it. That it was those words that triggered the anger in him. The family of the accused (convict) stated that he was hard working and through his effort was able to put food on their table and pay school fees for them. The convict regrets his action.

7. On Victim Impact Statement it was stated that the deceased was the last born in their family who related well with members of the community. He not only supported his mother financially but also other members of the extended family and pray for a harsh sentence to be meted to the convict.

8. Having taken into account the mitigation of the convict, the fact that he is a father of one child who has lost his support and the prosecution submission for a deterrent sentence as weighed against the offence, I am of the view that a deterrent sentence balanced with rehabilitation would be the most adequate and just sentence herein. I would therefore sentence the convict to imprisonment period of fifteen (15) years during which period while in custody would undergo further rehabilitation towards anger management. I have in passing this sentence taken into account the fact that the convict has been in custody for four (4) years and is declared a first offender by the prosecution though the probation report indicated that he had been convicted and sentenced to two (2) years for being in possession of narcotic substances.

9. Order:

a) The convict to serve imprisonment sentence of fifteen (15) years.

b) The same has right of appeal on both sentence and conviction while the prosecution has right of appeal on sentence and it is so ordered.

Dated, delivered and signed at Nairobi this 12th day of February, 2019.

.....

J. WAKIAGA

JUDGE

In the presence of:-

Mr. Naulikha for the State

Mr. Wachira for the accused

Accused present

Court Assistant - Karwitha