



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

HCCR NO. 5 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

DAVID KIPLANGAT TONUI.....ACCUSED

RULING ON SENTENCE

1. In the judgment of this court dated 24th October 2018, I found the convicted person, David Kiplangat Tonui, guilty of the offence of murder contrary to section 203 as read with section 204 of the Penal Code. It was my finding that on the 24th day of January 2011 at Cheptenye Village in Sosirot Township in Kericho within the Rift Valley Province, he murdered Edwin Kiprotich Langat.

2. In mitigation on behalf of the convict, Learned Counsel, Mr. Nyadimo, stated that the convict is an elderly statesman aged 58 with a wife and 6 children. He was remorseful for his actions which had resulted in the death of his colleague and friend. He urged the court to be lenient and be guided by the decision of the Supreme Court in **Francis Karioko Muruatetu & Others vs Republic Supreme Court Petition No. 15 of 2015** and not impose the death penalty on the convict.

3. In its decision in **Muruatetu**, the Supreme Court held that the mandatory nature of the death penalty contained in section 204 of the Penal Code was unconstitutional. While the death penalty is not *per se* unconstitutional, imposing the death sentence without considering mitigating factors or extenuating circumstances violates the right to a fair trial guaranteed under Article 50 (2) of the Constitution. The effect of this decision, to my understanding, is that the court, where the sentence to be imposed for an offence is death, has a discretion to consider mitigating factors in determining what sentence to pass, and is not bound to impose the death penalty.

4. The Supreme Court went further to vary the **Sentencing Policy Guidelines** promulgated by the Judiciary in 2016. It provided the following guidelines with regard to mitigating factors that are applicable in a re-hearing sentence for the conviction of a murder charge:

(a) The age of the offender;

(b) Being a first offender;

(c) Whether the 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 believe that these guidelines provide appropriate criteria for the court to consider in passing sentence on a person convicted of the offence of murder.

6. In a social inquiry report filed before this court on 16th January 2019, it is noted that the convict, a father of six, who is 59 years of age, is remorseful for his actions. The report indicates that he stated to the probation officer that he was provoked by the deceased and acted due to anger as he had heard that the deceased was having an affair with his wife. He was remorseful and was promising not to re-offend.

7. I have noted the mitigation of the convict, and the contents of the social inquiry report. The convict states that he is remorseful, and that he acted out of anger. However, that does not change the fact that he ended the life of a man who was, like him, a son, husband and father. That he ended the life of the deceased in anger, on the basis of rumours, does not excuse him.

8. The penalty imposed by law for the offence of murder is death. However, taking into account the convict's age, the fact that he is a first offender, and has expressed remorse for his actions, I sentence him to 30 years' imprisonment.

9. He has a right of appeal in 14 days.

Dated Delivered and Signed at Kericho this 7th day of February 2019

MUMBI NGUGI

JUDGE