

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CORAM: D.S MAJANJA J.

CRIMINAL CASE NO. 23 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

ANN NJOKI MACHARIA.....ACCUSED

RULING ON SENTENCE

1. The accused, ANN NJOKI MACHARIA, was charged with the murder of EDWARD MONARI OMBATI which took place on 9th November 2017 at Mwembe, Kisii County. She has now been convicted and I am called upon to consider the sentence. In doing so, I am alive to the fact that the maximum sentence for the offence of murder under section 204 of the Penal Code after the mandatory death sentence was declared unconstitutional by the Supreme Court in the sentence of death. In considering the appropriate I must take into account mitigating and aggravating factors and other relevant factors regarding the case.
2. According to the Probation report dated 21st December 2018, the accused is aged 33 years old. She is single and has two children from a previous marriage. She has no known criminal antecedents and is a first offender. In fact, the probation officer recommends a non-custodial sentence given the fact that she seeks leniency and has shown remorse. Her advocate echoed these sentiments and added that given her age and the fact that a year in custody has made her reflect on her act should be taken into account.
3. The State on its part seeks a custodial sentence. The deceased's father, JOSEPH OMBATA MAYOYO, expressed pain at the incident since the deceased was his first born son. He urged that justice takes its course.
4. I have considered all these factors. The felonious act was a serious one given that the parties were in a close relationship. Although, the accused must have felt remorse later, the act of stabbing a person deliberately must be punished by the law and since the offence is one of murder, a non custodial sentence is ruled out.
5. Taking into account sentences issued by superior courts in similar cases, I hereby sentence ANN NJOKI MACHARIA to TWENTY YEARS imprisonment to run from 14th December 2017. Right of appeal explained.

Dated and delivered at Kisii this 4th day of February 2019.

D.S MAJANJA

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions.

Mr. Nyakundi Advocate, for the accused.