

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL CASE NO. 13 OF 2011

REPUBLIC.....DPP

VERSUS

NICHOLAS KIMARU KEMBOI.....ACCUSED

RULING

1. The accused herein was convicted on 23rd July 2018 by Sitati J. of the murder of his wife, Sylvia Monyani.
2. A sentencing hearing was conducted on 28th January 2019. At mitigation, the accused, through his advocate, Mr Matete, pleaded that he was extremely remorseful over what had happened. He said he had been in custody since 2011. He pleaded that he was a father of one child, and the sole breadwinner for his family including his aged mother. He stated that he was a young man of twenty-eight years and given a chance he would be productive to both his family and the nation. He promised to mend his ways and to reform. Mr Ng'etich for the state left the matter to the court.
3. To determine the most appropriate sentence for the offence that the accused was convicted of, I am required to consider the circumstances surrounding the commission of the offence and the circumstances of the victim and of the accused. In particular, I must pay attention to both aggravating and mitigating circumstances.
4. With regard to the circumstances, I have noted that the deceased died after being hit on the head and thereby suffering a fracture on the skull, and she had also been strangled. I have noted too that the accused dumped her body in a pit latrine in an effort to conceal the murder, with the body only being discovered following the concerted efforts of the parents of the deceased.
5. I am alive to the principles of sentencing, which require me to impose a sentence that is proportionate to the offending behaviour, as weighed against its impact and the responsibility of the accused. I am also conscious about equality or uniformity or parity or impartiality in sentencing so that the similar sentences are awarded for similar offences committed in similar circumstances. I must also respect human rights and fundamental freedoms, and adhere to domestic and international and regional standards on sentencing.
6. The offence committed was serious, a person lost their life in circumstances that were not justified. The sentence that the circumstances call for should be deterrent for offences that are committed in such a senseless manner as the instant one, to teach a lesson to both the accused and the community that crime does not pay. I shall accordingly sentence the accused to serve forty (40) years in prison. There is a right of appeal to the Court of Appeal within fourteen (14) days.

DELIVERED DATED AND SIGNED AT KAKAMEGA THIS 10th DAY OF April 2019

W MUSYOKA

JUDGE