



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAROK**

**CRIMINAL CASE No 10 of 2017**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**1. EMMANUEL KIPROTICH SIGEI.....ACCUSED**

**2. IRENE NALOMUTA SIGEI.....ACCUSED**

**JUDGEMENT ON SENTENCE**

1. The issue before me is one of the appropriate sentence to be imposed against both accused, who stand convicted of the murder of their deceased one and half years old daughter.
2. In imposing the appropriate sentence, the court is required to consider both the aggravating and mitigating factors.
3. The aggravating factors include the following. According to the postmortem report, the cause of death was due to acute gastritis and obnoxious substance. The deceased died due to poisoning. The deceased was their very young child aged 1 ½ years old.
4. At the request of the defence I called for a probation report, which was in the end prepared by Mr. Bett, the county director of probation services. According to that report both accused do not have previous criminal history. The family of the first accused and that of the second accused have embarked on a reconciliation process. The community are willing to accept them back into their community. The community has also urged the court to impose a non-custodial for purposes of rehabilitation.
5. Furthermore, the report indicates that the parents of the 1<sup>st</sup> accused are elderly. The report further indicates that the father of the first accused is of bad health and is undergoing treatment at Longisa referral hospital. Additionally, the parents of the accused are now taking care of the remaining child of the accused. The parents also depended on the accused for their upkeep. The probation has recommended that the accused be sentenced to a non-custodial sentence.
6. Counsel for the accused, Ms. Maritim urged the court to impose a non-custodial or a lesser lenient sentence. She cited *Francis Muruatetu and Another v Republic 2017) eKLR*, in which the Supreme Court ruled as unconstitutional the automatic imposition of the penalty of death upon the entry of conviction in respect of the offence of murder. As a result, this court now has discretion to impose a death or a non-penalty sentence. She also cited the decision of the High Court in *Republic v John Nganga Gacheru and Another (2018) eKLR*, in which that court sentenced the accused to fifteen years' imprisonment *after* convicting them for the offence of murder.
7. In addition to the foregoing matters, I accept the prosecution submission that both accused are first offenders. I also find that they have been in custody since 21<sup>st</sup> February 2014, which is now over five years. In accordance with section 333 (2) of the Criminal Procedure Code (Cap 75) Laws of Kenya, I am required to take this period into account in sentencing the accused.
8. I have considered both the aggravating and mitigating factors. I have also considered the submissions of Ms. Maritim. I find that the deceased suffered a painful death. The duty of the accused as parents was to take care and protect the deceased. Instead they turned against the deceased and murdered her. Even if the accused thought this type of killing was a form of euthanasia, since the child was crawling and sickly due to flu, it is still an offence to do so. I also find that the deceased was in the custody of both the accused.
9. Furthermore, I find that the accused are first offenders. I further find that the community is prepared to have both accused back in society. Finally, I find that the probation officer has recommended the imposition of a non-custodial sentence. In the circumstances, I find the sentence of death is not appropriate.
10. In the light of the foregoing, I find that a custodial sentence is necessary to deter the accused and potential offenders. I therefore sentence both accused to fifteen years' imprisonment.

**Judgement dated, signed and delivered in open court at Narok this 9<sup>th</sup> day of April, 2019 in the presence of Mr. Omwega for the state and Ms. Martim for the accused.**

**J. M. Bwonwonga**

**Judge**

**09/04/2019**