

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 51 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

THOMAS OCHANGO.....ACCUSED

RULING ON SENTENCE

1. Thomas Ochango has been found guilty of murder of Phylis Minyoso and has been convicted of the same. The offence was committed on 6th June 2016 at Kangemi Location in Dagoretti within Nairobi County. The circumstances under which this offence was committed are contained in the judgment of this court delivered on 28th March 2019.

2. In the proceedings before sentence, the prosecution informed the court that the accused is a first offender since he did not have previous criminal records.

3. In mitigation, the accused through Mrs. Kinyori, learned counsel, told the court that the accused is aged 35 years and the 7th born in a family of 8 children. That his father died when the accused was in class 6 leaving them with his mother; that the other siblings have also died leaving the accused with one sister; that he was brought up in Vihiga and dropped out of school due to lack of school fees. He travelled to Nairobi to look for means of earning a livelihood and met the deceased and they lived together. The deceased had two daughters and they lived together for five years before this incident happened. Court was told that the accused has another family with three children and that he was taking care of the two families as well as his elderly mother. The other family of the accused has relocated to their rural home. The accused told the court that he was greatly remorseful and seeks forgiveness. He said he has been in custody for three years and asks the court to exercise mercy and sentence him to a non-custodial sentence.

4. It is not clear from the evidence what happened when the accused and the deceased were left alone inside their house. This court found the defence of the accused that he was away when his wife was killed to be untruthful. However, without eye witness account as to what really happened, this court was left with circumstantial evidence to base the conviction on. Given that there is evidence that there were signs of a struggle due to disturbed items in the house, it is not far-fetched for this court to believe that the accused and the deceased must have argued and perhaps struggled before the deceased was killed.

5. I have noted that the accused is remorseful for his actions. However the remorse he feels will not bring back the lost life. It is my consideration that a sentence of 20 years is befitting of the accused given the circumstances of this offence. I hereby sentence the accused Thomas Ochango to serve a prison term of 20 years. I note that the accused has been in custody from June 2016 when he was remanded. This is a period of three years which shall be subtracted from the 20 years. The accused shall therefore serve the remainder of that period. For the avoidance of doubt the accused shall serve seventeen (17) years imprisonment from today's date. It is so ordered.

Delivered, dated and signed this 9th day of May 2019.

S. N. Mutuku

Judge