



**REPUBLIC OF KENYA**

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

**HIGH COURT CRIMINAL CASE NO. 109 OF 2015**

**LESIT J**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**DAVID MACHARIA MWANGI.....ACCUSED**

**RULING ON SENTENCE**

1. The accused **DAVID MACHARIA MWANGI** was convicted for one count of murder contrary to **section 203** of the **Penal Code** after a full trial. This is the ruling on sentence.
2. The charge of murder contrary to **section 203** of the **Penal Code** carries a death sentence as prescribed under **section 204** of the **Penal Code**. The Sentencing Policy Guidelines requires that before sentence the court considers certain factors affecting sentence, including the accused mitigation, the period spent in custody and accused previous records. The court is also required to consider Victim Impact Statement where available.
3. I have considered that the accused was arraigned in court on 3<sup>rd</sup> December, 2015 and since that date he has been in remand custody pending his trial. That is a period of 3 years five months.
4. The Prosecution did not receive any previous record of the accused and so requested the court to treat the accused as a first offender.
5. Mr. Wakaba for the accused gave mitigation on behalf of his client. Counsel urged that the accused was remorseful for the circumstances under which the deceased lost his life. He urged that the accused had been cooperative while in remand and prayed for a non-custodial sentence urging that he will be of good behavior, law abiding and was ready to re-locate to Murang'a County away from the place where the offence took place.
6. I have considered the Pre-Sentence Report filed by Ms. Pauline Wainaina, Probation Officer. The Report is comprehensive and contains accused background, accused attitude to this offence, the reactions of his family including his wife. There is also contained therein the community's attitude towards the accused and the offence together with a Victim Impact Statement.
7. The Report gives detail of accused character and antecedent. It paints a negative picture and the family and community express fear if the accused is considered for a non-custodial sentence.
8. On the side of the Victims, the parents, brother and cousin of the deceased were interviewed. They know the accused as they come from the same village. They are yet to come to terms with their loss and are still in pain for reason the life of the deceased was cut short at a very youthful time.
9. The accused denied the offence but at the same time blames alcohol and states he had not intended to cause the deceased death but that it was misfortune and the fact that both he and the deceased were drunk.
10. The Probation Officer did not recommend a non-custodial sentence for the accused on grounds his release may threaten peace and security both to himself, his family and family of the deceased and to the community from either side.
11. In addition to these factors, I have considered the circumstances under which the deceased died. He was a victim of an attack directed at the wife of the accused. It was a purely unprovoked attack. The deceased death was wanton and totally unwarranted.
12. I have also taken into account the Supreme Court's Ruling in **Francis Kariko Muruatetu and Another versus Republic and Others [2017] eKLR, Petition No. 15 and 16 of 2016 [consolidated]**.

The courts now have power to exercise discretion while passing sentence for a capital charge and no longer lacks jurisdiction to give a non-capital sentence.

13. Having considered all these factors, circumstances and report I find that a non-custodial sentence is not an offence in this case. I will sentence the accused to an imprisonment term of 25 years.

14. He has 14 days to appeal the conviction and sentence in this case.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2<sup>ND</sup> DAY OF MAY, 2019.**

**LESIT J**

**JUDGE**