



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 46 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

CYRUS NYENZO.....ACCUSED

RULING ON SENTENCE

1. The accused has been found guilty of the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The court is now required to consider the appropriate sentence on the accused.
2. In **Francis Karioko Muruatetu & Another –Vs- Republic Petition No. 15 of 2015 (2017) eKLR** the Supreme Court declared as unconstitutional the mandatory death sentence for murder provided in the Penal Code. The death sentence for murder is thus a discretionary maim sentence.
3. The prosecution counsel Mr. Ng'etich asked the court to treat the accused as a first offender. Mr. Otsieno holding brief for Miss Wilunda for the accused mitigated that the accused is remorseful for committing the offence. That he is a young man and has been in custody since 2014. That he has learnt a lesson. The advocate pleaded for leniency in sentencing.
4. The court called for pre-sentence report that was prepared by a probation officer Mr. Wangila M. Gregory. The report painted a grim picture of the accused that he was facing rejection by his father that he (the accused) was not his biological son.
5. Sentence is a discretion of the trial court. In **Ambani Vs Republic**, the High Court stated that a sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that the court should look at the facts and the circumstances of the case in its entirety before settling for any given sentence.
6. The Court of Appeal **Thomas Mwambu Wenyi Vs Republic (2017) eKLR** cited the decision of the Supreme Court of India in **Alister Anthony Pereira Vs State of Maharashtra** at paragraph 70-71 where the court held the following on sentencing:-

***“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.*”**

7. The Judiciary Sentencing Policy Guidelines lists the objectives of sentencing at page 15 paragraph 4.1 as follows:

1. **Retribution:** To punish the offender for his/her criminal conduct in a just manner.
2. **Deterrence:** To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
3. **Rehabilitation:** To enable the offender reform from his criminal disposition and become a law abiding person.
4. **Restorative Justice:** To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims, communities' and offenders' needs and justice demands that these are met. Further, to promote a sense

of responsibility through the offender's contribution towards meeting the victims' needs.

5. **Community protection:** To protect the community by incapacitating the offender.

6. **Denunciation:** To communicate the community's condemnation of the criminal conduct.

8. I have considered authorities in other cases where sentences for murder were imposed. In **Republic –Vs- Stephen Wekesa Wasike (2014) eKLR** Mutuku J. sentenced the accused to 20 years imprisonment after convicting him of murder. In **Elizabeth Mwiyaithi Syengo – Vs- Republic (2019) eKLR** where the petitioner had been sentenced to death for the offence of murder Kemei J. re-sentenced the petitioner to serve 20 years imprisonment.

9. The accused is a first offender. The maximum sentence for the offence of murder is death.

I have considered that the accused has been in custody for 4 years and 9 months since the time when he was arrested in September, 2014. The deceased herein was a brother to the accused. Considering all the circumstances of this case I sentence the accused to serve fifteen years imprisonment.

Delivered, dated and signed in open court at Kakamega this 18th day of June, 2019.

J. NJAGI

JUDGE

In the presence of:

Mr. Ng'etich for state

Miss Wilunda for accused

Accused - present

Court Assistant - George

14 days right of appeal.