



IN THE HIGH COURT OF KENYA

AT KISII

CORAM: D. S. MAJANJA J.

CRIMINAL CASE NO. 8 OF 2019

BETWEEN

REPUBLIC..... PROSECUTOR

AND

NICHOLAS MURRI.....ACCUSED

RULING ON SENTENCE

1. The accused, **NICHOLAS MURRI**, has now been convicted of the murder of **KEVIN OUMA NYONGESA** (“the deceased”). I am now called upon to impose an appropriate sentence bearing in mind that the maximum sentence upon conviction for murder under **section 204** of the *Penal Code (Chapter 63 of the Laws of Kenya)* is the death sentence.

2. In brief, circumstances of the case were that on the night material to this case, the accused injured the deceased by cutting him several times with a panga on the head and other parts of the body. I discounted the accused’s defence of self defence and provocation and found him guilty of murder.

3. Before sentencing, I directed the Probation Service to prepare a sentencing review report. The report was filed in court on 12th June 2019. I also heard the statement of Benjamin Makhandia, the deceased’s uncle, who was from Bungoma. Counsel for the accused made submissions in mitigation on the accused’s behalf.

4. Mr Makhandia, a brother to the deceased’s father, told the court that the deceased was 10 years old when his father died in 1978. He took up the task of bringing up the deceased. He informed the court that the deceased was married and had left behind a wife and 4 children. He urged the court to do justice in the case taking into account the manner in which the deceased was brutally murdered. He urged the court to impose a heavy sentence.

5. Counsel for the accused, supported the findings and recommendations of the Probation Service contained in the Pre-sentencing report. He told the court that the accused was married with 2 wives and 12 children. That the children were all going to school and since the accused was in custody, the children had dropped out of school due to lack of school fees. He submitted that the accused was a businessman who supported not only his family but also his aged parents who relied solely on him. His father was 89 years old and his mother 84 years old. He further submitted that the accused father had entrusted him with his power of attorney to follow up the land dispute between his family and that of the deceased’s employer.

6. Counsel for the accused further submitted that the family was willing to receive him back and was prepared to reconcile with deceased’s family. He however stated that reconciliation efforts had not begun as the accused was in custody and since the family lacked means to go to Bungoma, it was not possible to follow up on the issue.

7. Counsel further submitted that the court should consider the circumstances of the case particularly the fact that it is the accused who was the aggressor and that the accused only reacted to protect himself. He pointed out that accused was seriously injured and is now crippled and it is for that reason he will leave with the scar or mark of the what he did and in his view, that was sufficient suffering. Counsel urged the court to consider a lenient sentence and non-custodial sentence.

8. The key highlights of the Pre-Sentence review report are that the social inquiry revealed that the accused did not have any criminal antecedents and that although the accused and the employer of the deceased had a boundary dispute, that fact could not have played any role in the matter as the deceased was an outsider. There was an indication that the family was ready to assist in reconciliation process. The Probation Officer recommended probation as the accused was remorseful, his family would suffer if he remained in prison and the community was generally supportive of the accused.

9. I have considered in the factors in favour of the accused and in particular his plea for a non-custodial sentence. The offence of murder is the gravest offence in the hierarchy of offences hence the penalty of death imposed as the maximum sentence. In my view, a non-custodial sentence is out of consideration. The accused has expressed remorse and has positive factors in his favour as he does not have any criminal antecedents and the community supports his integration in the community in order to pursue reconciliation efforts.

10. Despite the favourable factors, the death of the deceased at the hand of the accused cannot be swept away by a light sentence. I must say that the act committed by the accused was particularly brutal and vicious as evidenced by the injuries the deceased sustained. Just like the accused, the deceased family has been left with a breadwinner. While I accept that the accused's community is willing to receive him, I also recognise the fact that the deceased was an "outsider" in the accused's community. He did not deserve to die in the manner he did and it is the duty of this court to speak for him and his family.

11. Taking into account all the circumstances of the case and the fact that this court is obliged to express the public sense of outrage and disapproval of the accused's act, I sentence the accused **NICHOLAS MURRI** to **twenty five (25) years** imprisonment.

DATED and DELIVERED at KISII this 14th day of June 2019.

D.S. MAJANJA

JUDGE

Dr Nyagaka, Advocate for the accused.

Mr Otieno, Senior Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions, for the State.