

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL CASE NO.8 OF 2016

REPUBLIC.....PROSECUTION

VERSUS

DKK alias K.....1ST ACCUSED

DAVID KIPLANGAT CHELULE.....2ND ACCUSED

SENTENCE

1. The two accused persons have been convicted of murder. Since the prosecution cannot say that they have previous conviction, this court treats them as first offenders.
2. The first accused DKK alias K is said to be a minor, aged below 18 years. Evidence on his age was however not tendered before the trial court, and the trial court did not make a finding that he was a minor. Though he might appear to be young, the fact that he is still in secondary school is no proof that he is a minor aged below 18 years.
3. The pre-sentence report suggested a lenient sentence but indicated that there was still family animosity and that 1st accused may be harmed if released from custody now. With regard to the 2nd accused David Kiplagat Chelule, the probation report depicts him as a middle aged man of 45 years. Non-custodial sentence was not recommended.
4. Counsel for the accused Mr. Nyadimo in mitigation stated in court that the 1st accused be treated as a minor, and that any punishment be anchored under the provisions of section 190 and 191 of the Children Act No.8 of 2001, and that the 2nd accused be treated with leniency in sentencing.
5. I have considered the circumstances of the offence and the mitigating factors as well as the pre-sentencing reports. The mandatory statutory death penalty for murder has been varied by the Supreme Court in **Francis Muriatetu -vs- Republic – Petition Nos.15 and 16 of 2015** and courts can now hand down any appropriate sentence taking into account the circumstances of the case.
6. The deceased was mercilessly beaten with a club and a stick by the two accused and he died. He had been assaulted earlier by watchmen and instead of sympathizing with him, they assaulted him, though he was drunk and they knew him well.
7. I sentence each of the accused to serve 20 years imprisonment. Right of appeal explained.

Dated at Kericho this 13th June 2019.

George Dulu

JUDGE