



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CRIMINAL CASE NO. 18 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

KIHU ANTHONY MBUGUA.....ACCUSED

SENTENCE

1. The convict was on 16/10/2018 convicted of the murder of his father **KIHU ANTHONY MBUGUA** on the 10th day of March, 2012 and in mitigation through his Advocate on record Mr. Mulombi stated that he was remorseful of the events as he had no intention to murder his father. He stated that he was not in a state of mind to make judgment as at some stage he had been under medication. He stated further that he had been in custody since his arrest and urged the court to take that into account to exercise leniency while passing sentence.

2. The State through Mr. Naulikha submitted that though the convict was a first offender, the emotions were very high in the family and therefore the convict should not be granted non-custodial sentence as to do so would put him in danger.

3. In compliance with Sentencing Policy Guidelines and Regulations the court called for a Pre-sentencing report in which it was stated that the offender was the only son of the deceased and that his mother died in December 2011 after a short illness. It was stated therein that the family of the accused disintegrated after the death of both parents with allegation that the maternal relatives motivated the offender to eliminate the father after the death of their mother to inherit her property.

4. In the said report it was stated that in 2009 the convict was admitted at Chiromo Lane Psychiatric Clinic on a diagnosis of mild depression which culminated to schizophrenia. At the time of the commission of the offence the convict was living with his father on a plot which was given to his mother by her parents who constructed for her a house thereat and that the offender had instilled fear in his siblings whom they were not willing to forgive. It was stated that the relationship between the convict and the deceased got strained because the same could not provide for him as the mother used to. It was stated further that the plot where the convict used to reside with his father was repossessed by his maternal relatives and therefore if released the convict will have nowhere to reside.

5. The objectives of sentencing as per the Judiciary Sentencing Policy Guidelines 4.1 are 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/her 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.

5) Community protection: to protect the community by incapacitating the offender.

6) Denunciation: to communicate the community's condemnation of the criminal conduct.

6. In sentencing the convict herein the court is guided by the decision of the Supreme Court of Kenya in **Petition No. 15 & 16 of 2015 (consolidated) FRANCIS MURUATETU & ANOTHER v REPUBLIC [2017] eKLR** where the court had this to say:-

“[41] It is evident that the trial process does not stop at convicting the accused. There is no doubt in our minds that sentencing is

a crucial component of a trial. It is during sentencing that the court hears submissions that impact on sentencing. This necessarily means that the principle of fair trial must be accorded to the sentencing stage too.

[42] Pursuant to Sections 216 and 329 of the Criminal Procedure Code, Chapter 75, Laws of Kenya, mitigation is a part of the trial process

...

[52] We are in agreement and affirm the Court of Appeal decision in Mutiso that whilst the Constitution recognizes the death penalty as being lawful, it does not provide that when a conviction for murder is recorded, only the death sentence shall be imposed. We also agree with the High Court's statement in Joseph Kaberia Kahinga that mitigation does have a place in the trial process with regard to convicted persons pursuant to Section 204 of the Penal Code. It is during mitigation, after conviction and before sentencing, that the offender's version of events may be heavy with pathos necessitating the Court to consider an aspect that may have been unclear during the trial process calling for pity more than censure or on the converse, impose the death sentence, if mitigation reveals an untold degree of brutality and callousness.

...

[59] We now lay to rest the quagmire that has plagued the courts with regard to the mandatory nature of Section 204 of the Penal Code. We do this by determining that any court dealing with the offence of murder is allowed to exercise judicial discretion by considering any mitigating factors, in sentencing an accused person charged with and found guilty of that offence. To do otherwise will render a trial, with the resulting sentence under Section 204 of the Penal Code, unfair thereby conflicting with Articles 25 (c), 28, 48 and 50 (1) and (2)(q) of the Constitution."

7. Having taken into account the mitigation of the convict and being alive to the fact that he alleges to suffering from depression which led to his admission at Chiromo Lane Psychiatric Clinic in the year 2009 and having found that at the time of the commission of the offence the same was in total control of his mental capacity and knew what he was doing based on his action subsequent thereto, it is clear to my mind that the convict killed his father who meant well for his welfare by urging him to find something useful to do, in a brutal and cold blood manner, the death of which has led to his family disintegration with his sisters not willing to take him on.

8. Whereas he is a young man aged thirty three (33) years and can be rehabilitated to be a useful member of society, having taken into account the circumstances under which the offence was committed and the manner therefore, and the resultant consequences, I have come to the conclusion that he can only best be rehabilitated while in custody where he will benefit from the prison rehabilitation programs. I have further taken into account the fact that the convict has been in remand custody for the last seven (7) years and being alive to his need for further rehabilitation and counselling as stated herein, I hereby sentence the same to an imprisonment term of twenty five (25) years from the 13th of March 2012 when he first appeared in court.

9. The convict is entitled to remission on the said sentence if any and has right of appeal on both conviction and sentence and it is hereby ordered.

Dated, delivered and signed at Nairobi this 11th day of June, 2019.

.....

J. WAKIAGA

JUDGE

In the presence of:-

Mr. Naulikha for the State

Ms. Njoki for Nyangito for the accused

Accused present

Court Assistant - Karwitha