

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 5 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

OMAR WAITHAKA KEVAL.....ACCUSED

RULING ON SENTENCE

1. Omar Waithaka Keval was tried for the murder of Yvonne Njoki Maina that occurred on 2nd January 2012 at Happylands Fats in Harambee Estate Buruburu Nairobi. In a judgment delivered by this court on 30th May 2019 he was found guilty of murder and convicted. The matter was deferred to 3rd June 2019 to allow Mr. Wandugi, learned counsel for the accused time to mitigate before sentence and the prosecutor time to bring accused's previous records.

2. On 3rd June 2019, Ms. Ikol, learned Prosecution Counsel, informed the court that the Investigating Officer was not able to get any previous records of the accused. She asked the court to treat the accused as a first offender.

3. In mitigation, Mr. Wandugi learned counsel for the accused submitted that the accused was extremely remorseful about the circumstances that brought him to court and apologizes to the family of the deceased. He submitted that the accused, now aged 42 years, was a vigilant young man trying to make a living; that he had two mini buses plying South C to Town and that he led an average life supporting his elderly parents and siblings.

4. Mr. Wandugi submitted that the accused has been completely broken down due to these events and has been traumatized; that he has not been able to move on and that his life appears hopeless. Counsel submitted that the accused has been cooperative throughout the trial and deserves this court's mercy. He submitted that the accused did all he could to assist the deceased after the event but this did not help. He submitted that death sentence is no longer mandatory and urged this court to give the accused another chance in life by imposing a lenient sentence.

5. It was submitted further that the accused has adopted a little girl called A N now 3 years old and he caters for her needs; that the baby has just started baby class and that she has been rendered destitute by the circumstances facing the accused.

6. I have considered the mitigation. The circumstances of this offence are clear to me and are indeed unfortunate. It is not lost to this court that the relationship between the accused and the deceased was not a happy one and relatives of the deceased had described this relationship as abusive and toxic. This court is also alive to the fact that the accused and the deceased spent the better part of that night, 1st and 2nd January 2012, chewing *miraa* and perhaps drinking. They went to accused's house in the wee hours of the morning. Shortly on arriving at home the deceased was killed.

7. I have also taken into account that the police did not present any previous criminal records of the accused. He will be treated as a first offender. I have considered that the accused is remorseful for the actions leading to the death of the deceased. A life has been lost. Nothing will ever bring it back. This is a fact that the accused and the family of the deceased will live with for as long as they shall remain alive.

8. As submitted by Mr. Wandugi, this court has discretion in sentencing unlike before. This change of affairs in this regard came about after the decision of the Supreme Court in the case of **Francis Karioko Muruatetu & another v Republic [2017] eKLR.**

9. In view of the above, it is my consideration that justice will be served by sentencing the accused to fifteen (15) years imprisonment. I therefore sentence Omar Waithaka Keval to fifteen (15) years custodial sentence. I also inform him of his right of appeal which shall be exercised within 14 days from today's date.

10. Orders shall issue accordingly.

Dated, signed and delivered this 10th day of June 2019.

S. N. Mutuku

Judge