



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**CRIMINAL CASE NO. 57 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**BENIGNO KUBASU ANGASA.....ACCUSED**

**SENTENCE**

1. The convict **BENIGNO KUBASU ANGASA** was on the 12<sup>th</sup> day of March 2019 convicted of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code** hereof in respect of the death of one **SARAH KERUBO**.

2. The court is now called upon to pass an appropriate, just, proportionate and adequate sentence herein. The starting point in this judicial function would be a look at **Section 204** of the **Penal Code** against the Supreme Court determination in **FRANCIS KARIOKO MURUATETU & ANOTHER v REPUBLIC [2017] eKLR, Petition No. 15 & 16 of 2015 (consolidated)**, where the court stated:-

*“[48] Section 204 of the Penal Code deprives the Court of the use of judicial discretion in a matter of life and death. Such law can only be regarded as harsh, unjust and unfair. The mandatory nature deprives the Courts of their legitimate jurisdiction to exercise discretion not to impose the death sentence in appropriate cases. Where a court listens to mitigating circumstances but has, nonetheless, to impose a set sentence, the sentence imposed fails to conform to the tenets of fair trial that accrue to accused persons under Articles 25 of the Constitution; an absolute right.*

...

*[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.”***

## **PRE-SENTENCING REPORT**

3. In line with the Sentencing Policy Guidelines and Regulations and as stated in the Supreme Court decision above, the court called for Pre-sentencing report in which the following were stated:- The convict was at the time of the offence working as a matatu driver. Before he started to cohabit with the deceased he had been in a relationship with one L.O. with whom they had two children. He stated that he committed the offence after a quarrel with the deceased on account of her friendship with someone he did not like. He was remorseful and pleaded to be given a chance to go back to his children. His mother reported that the relationship with the deceased was not rosy and at some stage had approached the deceased's parents for intervention.

4. On the Victim Impact Statement it was stated that the deceased was single but a mother of one child. The parents expressed pain at the loss compounded with their grandchild now calling them mum and dad. They are calling for a deterrent sentence to break the cycle of domestic violence and femicide. It is their take that the deceased was subjected to both physical and sexual abuse by the convict.

5. In conclusion it was stated that the convict admitted the offence but stated that he never intended to kill the deceased whom he described as a good girl whom he loved. He stated that he was under the influence of alcohol when he used excessive force against the deceased. He regretted his action and sought to be given a chance to take care of his children.

## **MITIGATION**

6. In mitigation the convict through his Advocate Mr. Mathenge stated that he had expressed remorse at the untimely death of the deceased whom he was in relationship with. He stated that the same had been in custody since 2012 and had reflected on his life, been adequately rehabilitated and transformed to live positively and to manage the issue of his anger through several training at the remand facilities. It was stated that both had issues with controlling their alcohol which could have been the possible cause of the offence. The court was therefore urged to consider rehabilitation taking into account his age.

7. On behalf of the State Mr. Naulikha submitted that the convict exploited the deceased who had just been taken out of school and subjected her to all manner of abuses. It was stated that based on the circumstances of this case, death sentence is the most appropriate sentence.

8. The objectives of sentencing as per the Judiciary Sentencing Policy Guidelines 4.1 and as confirmed by the Supreme Court in the case of FRANCIS KARIOKO MURUATETU (supra) are:-

***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.**

**9.** In this matter, though the Probation officer's report states that the parents of the deceased did not consider that she was married to the convict, the evidence tendered before the court confirms otherwise. They were in some form of come-we-stay marriage which did not meet their approval. The said marriage was characterized by constant assault and abuses leading to admission of the deceased into various health facilities. What stands out is that despite the advice of her parents, the deceased always found it in her heart to forgive the convict and return back to him.

**10.** The court has taken judicial notice of the fact that the home front has now become unsafe haven and any sentence passed must reflect the fact that the offences of this nature have now pricked the judicial conscience of the court, to the extent that this court must state that enough is enough. The deceased sought the comfort and love of the convict; she gave her life and love to him for which she expected in return safety and protection. The convict used his position of authority or "insecurity" to inflict uncalled for pain and suffering upon her. He did not want her to work and it looks like he was insecure and therefore a control freak using violence to keep the deceased.

**11.** It is sad that on the morning of the murder, the convict locked the deceased in the house and left as if nothing had happened, having denied their neighbours the chance and opportunity of coming to her aid the previous night. The deceased must therefore had died a painful death and lonely as at the time. The conduct of the convict ought to be condemned in the strongest possible terms and since this court only has its sentence to do so, I have come to the conclusion that an imprisonment term of thirty five (35) years would be the best way to tell all men and women alike that enough is enough. Nobody should lose his/her life in places where they expect love and protection. No man/woman should be subjected to violence at the comfort of their home in exchange for love.

**12.** So as to act as deterrence and while giving the convict an opportunity for rehabilitation in prison the convict shall serve imprisonment sentence for a period of thirty five (35) years from 14<sup>th</sup> July 2014 when he first appeared in court. He shall be liable for remission upon serving twenty years (20) thereof and it is hereby ordered.

**13.** The convict has right of appeal both on conviction and sentence while the State has right of appeal on sentence.

**Dated, delivered and signed at Nairobi this 10<sup>th</sup> day of July, 2019.**

.....

**J. WAKIAGA**

**JUDGE**

**In the presence of:-**

*Mr. Naulikha for the State*

*Mr. Wakaba for the accused*

*Accused present*

*Court Assistant - Karwitha*