

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL CASE NO. 5 OF 2014

REPUBLIC

VERSUS

BENEDETTE NJOKI GACHINGA.....ACCUSED

RULING ON SENTENCE

1. The accused has been found guilty and has been convicted of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code;
2. The mandatory sentence for murder under the Penal Code is death; the Supreme Court has held that the mandatory nature of the death penalty to be unconstitutional as it deprives an accused person the right to mitigate and also takes away the trial court's jurisdiction to exercise its discretion to determine whether the death penalty is deserved and also to make a determination of the appropriate sentence from the facts and circumstances of the case; refer to **Francis Karioko Muruatetu and Another vs Republic [2017]eKLR.**
3. In mitigation made by counsel for the accused this court was urged to take into consideration the accused's advanced pregnancy, her illness, her youthful age and also the fact that she is a first offender;
4. It is the duty of this court to impose a sentence that meets the facts and circumstances of the case; in this instance this court has considered the circumstances and gravity of the offence and also the mitigation offered; the crime committed was heinous and this court concludes that the accused is not deserving of a non-custodial sentence and finds that the imposing of a term sentence to be appropriate;
5. The accused is hereby sentenced to serve a term of thirty (30) years imprisonment;

Orders accordingly.

Dated, Signed and Delivered at Nyeri this 4th day of July, 2019.

HON.A.MSHILA

JUDGE