



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

(CORAM: R. MWONGO, J.)

COURT CRIMINAL CASE NO. 2 OF 2014

REPUBLIC.....PROSECUTION

VERSUS

DAVID MAINA KAROKI.....ACCUSED

JUDGMENT ON SENTENCING

1. The Accused was convicted for murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The hearing was presided over by Meoli, J. After hearing 12 prosecution witnesses and the Accused's unsworn statement, Meoli, J found that **"the proven facts in this case unerringly point to the Accused as the person who murdered the deceased"** and that the said facts were incompatible with the Accused's innocence.

2. The court found that the Accused and the deceased were living as husband and wife. However, the deceased resided at Roots Academy where she was a teacher and the Accused rented a premises at Gilgil. Twice a week, he would visit her at her house. On 5th November, 2014 the couple went to the Catholic Hospital at Gilgil, and were later dropped by a taxi at the Accused's home that night.

3. On 6th November, 2014 the deceased did not go to school. On account of her absence at her house, there was concerned alarm. Finally, on 7th November, 2014 the Accused and deceased were found in his house. The entrance door was locked from the inside, and they were lying on the bed. The Accused was semi-conscious and the deceased was dead with blood oozing from her mouth and nose; a blood stained knife was found in a bucket next to her. The disarranged room showed signs of a struggle having taken place there.

4. The post mortem revealed injuries on the deceased's head, neck and left hand. Internally, the doctor noted a fracture on her hyoid bone, collapsed lungs and swelling of the brain. He concluded that death was due to neck, nose and mouth pressure in keeping with manual strangulation.

5. The court found that there had been no evidence of intrusion into the house. The Accused had murdered his wife and then ingested a pesticide in an attempt to commit suicide. Instead, he merely became unconscious, the state in which he was found.

6. Justice Meoli's judgment was delivered by me on 14th March, 2019 in the presence of the Accused who was represented by Mr. Owuor holding brief for Mr. Mugambi his lawyer. Mr. Owuor stated that he had instructions on mitigation but the Accused requested that his lawyer should be present. Thus, an adjournment was taken and mitigation was fixed for 1st April, 2019.

7. On that date, Mr. Mugambi for the Accused was absent. The court directed that the Deputy Registrar do telephone his office and inquire as to his whereabouts. The Registry reported back that same day, just after mid-day that counsel was not picking his phone. Mitigation was adjourned to 9th April, 2019. The Accused was advised to instruct another lawyer in the event that Mr. Mugambi failed to attend.

8. On 9th April, 2019 Mr. Mugambi appeared and apologized for his absences. In mitigation on behalf of the Accused he stated:

"The Accused is the first born in a family of four children. The parents are alive. The mother of Accused has informed me that the family of deceased and the family of Accused have cordial relations. That the burial was done jointly. Accused is remorseful. He lost his wife from this eventuality. This will hang on his shoulders forever. That loss is a punishment or infinite moment. Asks court for a lenient sentence. He is fairly young. They had no children, young couple. Court should consider the latest trend in sentencing where courts no longer mete out death sentence. I can address court on authorities, given time."

9. The court allowed the defence counsel to file submissions and authorities on sentencing, which he did on 28th May, 2019. The brief submissions conclude that the courts are no longer bound by the mandatory nature of the death sentence provided under **Section 204** of the

Penal Code. They have discretion in determining the sentence. The authorities relied on by counsel were:

- **Francis Karioko Muratetu & Another v Republic [2017] eKLR** (Supreme Court);
- **Wycliffe Wangusi Mafura v Republic [2018] eKLR** (Court of Appeal);
- **Stephen Kimanathi Mutunga v Republic [2019] eKLR** (High Court, Makeni).

10. I have carefully considered the above authorities and taken into account the Accused's mitigation. In my view, murder is most foul when committed in the context of a trustful love relationship. In such circumstances and where it is shown that the premeditation was followed by detailed and concise planning and execution of the deed, the murder is all the more detestable. In a love relationship, the victim surrenders her or himself to the other party emotionally and physically and in other ways. Such surrender accentuates the mercilessness, ruthlessness and hardheartedness of the murder.

11. The Accused was 24 years old when he committed the offence. He was in a relationship with the deceased for four years prior to that. He has three younger siblings. I have perused the Gilgil Sub-County Hospital psychiatrist's report dated 28th November, 2014 which is on file. It discloses that the Accused was sickly during his childhood, and was treated for depression and seizure disorder on 8th August, 2009, whilst preparing to sit for his Form 4 (four) examinations. He was followed up until 21st December, 2011. This appears to be about the time he got into a relationship with the deceased.

12. The report further indicates that the Accused had a history of irritability, mood swings, being easily distractible, had poor judgment and recurrent episodes of insomnia and non completion of tasks. This all pointed to the condition called bipolar mood disorder, associated with mood swings ranging from depressive lows to manic highs. The Accused was admitted to Gilgil Sub-County Hospital after the murder, on 7th November, 2014, due to organophosphate poisoning. He denied taking any poison and did not give an account of the circumstances that led to his admissions and arrest. He gave a history of being assaulted though the psychiatrist noted no obvious signs of assault.

13. All in all, I consider the Accused to be truly disturbed. This is evidenced in his brief seven sentence unsworn statement at the hearing. In it, he essentially stated that he was at his wife's house when he developed serious pain from ulcers. He then called a taxi to take him to hospital and returned to his home with his wife. He took some drugs and when he woke up, he found himself in hospital. He denied killing his wife.

14. I have taken all the aforesaid information and circumstances into account. Counsel submitted that ***"in the circumstances a sentence of imprisonment would serve the interest of justice."*** He urged the court to exercise discretion and mete a custodial or non-custodial sentence. In line with the **Muruatetu Case**, this court considers that it has a discretion to mete a sentence uncircumscribed by the mandatory wording of **Section 204** of the **Penal Code** which provides that:

"Any person convicted for murder shall be sentenced to death"

Undoubtedly, the death sentence is not the only sentence which this court can issue following the **Muruatetu** decision.

15. I am satisfied that this is a proper case for a custodial sentence. During incarceration, the Accused will have an opportunity to be observed in respect of his disorders and other conditions that indicate that he is disturbed. He may be helped through further psychiatric and counselling attention. If he emerges reformed and with a better psychological and life outlook, he should have an opportunity at another chance in life.

16. Accordingly, I sentence the Accused to twenty (20) years imprisonment with effect from the date of his conviction.

17. Orders accordingly.

Dated and Delivered at Naivasha this 4th Day of July, 2019.

RICHARD MWONGO

JUDGE

Delivered in the presence of:

1. Mr. Koima for the State
2. Mr. Mugambi for Accused
3. Court Clerk – Quinter Ogutu