



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CRIMINAL CASE NO. 60 OF 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOHN OTIENDE ALFAYO.....ACCUSED**

**RULING ON SENTENCE**

1. The accused was tried of the offence of murder by Justice R. N. Sitati. The judge however went on transfer before she delivered the judgment. She sent back the file and the judgment was delivered by Musyoka J. The trial court found the accused guilty of the said offence. This court is now called upon to consider the appropriate sentence in the case.
2. The brief facts of the case were that the accused and the deceased in the matter were neighbours. The deceased was working as a mechanic at Chavakali market. That on the day of the incident the deceased was repairing a public service vehicle that had broken down outside the accused's gate. The accused demanded for the vehicle to be removed from the place. There was an altercation between the accused and the deceased. The accused then went to his house and came back with a panga. He cut the deceased on the neck and killed him on the spot.
3. The state did not have previous records for the accused. It asked the court to treat the accused as a first offender.
4. **Miss Andia** appearing for the accused mitigated that the accused has been in custody since 2013. That he is advanced in age. That his stay in prison has made him to learn a lesson the hard way. The advocate prayed for leniency in sentencing.
5. The court called for a pre-sentence report. The report indicated that the accused is aged 61 years. That he is a widower with 6 adult children who are living independently. That he regrets his actions. That the deceased was a neighbour to the accused and left behind a wife and 6 children who live in their shamba next to the shamba of the accused.
6. Sentencing is a discretion of the trial court. In **Ambani Vs Republic**, the High Court stated that a sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that the court should look at the facts and the circumstances of the case in its entirety before settling for any given sentence.
7. The Court of Appeal **Thomas Mwambu Wenyi Vs Republic (2017) eKLR** cited the decision of the Supreme Court of India in **Alister Anthony Pereira Vs State of Maharashtra** at paragraph 70-71 where the court held the following on sentencing:-

*“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.*”

8. The Judiciary Sentencing Policy Guidelines lists the objectives of sentencing at page 15 paragraph 4.1 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 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. Criminal conduct ordinarily occasions victims, communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.

5. **Community protection:** To protect the community by incapacitating the offender.

6. **Denunciation:** To communicate the community's condemnation of the criminal conduct.

9. Section 333 (2) of the Criminal Procedure Code requires a sentencing court to take into account the period spent in custody awaiting trial.

10. I have considered the above stated principles of sentencing. The accused is aged 61 years. He is a first offender. He has been in custody for a period of 5½ years. The accused however took out the life of the deceased over a minor dispute that was not worth the life of a human being. The deceased died a grisly death of being cut on the neck with a panga. He left behind a wife and children. The death has no doubt caused them a lot of anguish.

11. The sentence imposed on the accused should be proportionate to the serious offence that he committed. The maximum sentence for the offence of murder as held in **Francis Karioko Muruatetu & Another –Vs- Republic & Others (2017) eKLR** is death. I do not however consider that a death sentence is warranted in the circumstances of the case. A prison sentence would serve the interests of justice in the case. I accordingly sentence the accused to serve 20 years imprisonment.

**Delivered, dated and signed in open court at Kakamega this 3<sup>rd</sup> day of July, 2019.**

**J. NJAGI**

**JUDGE**

In the presence of:

Mr. Juma for state

Miss Mukhwana holding brief for Andia for accused

Accused - present

Court Assistant - George

14 days right of appeal.