



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

HCCRA NO 52 OF 2016

FRED TENDWA LUMALAAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original Conviction and Sentence in the Criminal Case no 4969 of 2012 of the Principal Magistrate’s court at Eldoret H. Barraza – (PM)

R U L I N G

When the Appeal came up for hearing, my attention was drawn to the fact that the Appellant Co-accused at the Lower court had filed an Appeal Criminal Appeal No 81 of 2017 which was heard by **Majanja- J** and judgement therein delivered on 3rd day of June 2019, in which he affirmed the conviction but allowed the Appeal on sentence by setting aside the death sentence which he reduced to the following terms: -

- COUNT 1 Twenty (20) years imprisonment
- COUNT 2 Twenty (20) years imprisonment
- COUNT 3 Twenty (20) years imprisonment
- COUNT 4 Fifteen (15) years imprisonment

This appeal arising out of the same proceedings and same evidence is therefore to be treated as was in CRA NO 81/2017. I therefore confirm the conviction. On the sentence, I have been persuaded by the learned prosecutor that it is the Appellant before me who inflicted the fatal blow upon the deceased in count one and should therefore be given enhanced sentence and I agree with the said submissions. Not only did the Appellant take away the life of the complainant’s husband they proceeded to take away the intimate property by gang raping her. Which should be taken into account on sentence.

In respect of this appellant I therefore substitute the sentence on count one with an imprisonment period of (30) thirty years.

The death sentence is substituted with the following sentence to run concurrently from 20th November,2012.

- a) COUNT 1 Thirty (30) years
- b) COUNT 2 Twenty (20) years
- c) COUNT 3 Twenty (20) years
- d) COUNT 4 Fifteen (15) years

And it is ordered.

The Appellant has a right of appeal.

DATED, SIGNED and Delivered at ELDORET the 10th day of September,2019.

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J. WAKIAGA

JUDGE

10.9.2019