



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 28 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

MATHAYO LUKAVILO SIFUNA.....ACCUSED

SENTENCE

1. The accused was on the 16th May, 2019 convicted by this court of the offence of murder contrary to Section 203 as read with section 204 of the Penal Code. Miss Wilunda who appeared for the accused mitigated on his behalf that he is aged 29 years. That he is a young person and that he is remorseful for committing the offence. That he was a casual labourer. The advocate urged the court to be lenient in sentencing.
2. The state asked the court to treat the accused as a first offender.
3. The court called for a pre-sentence report which was prepared by a probation officer Mr. Masingila M. Gregory. The report indicates that the family and the community of the accused are not opposed to him being released to the community.
4. Section 204 of the Penal Code provides for a mandatory death sentence for the offence of murder. However in **Francis Karioko Muruatetu & Another –Vs- Republic (2017) eKLR** the Supreme Court held that the mandatory death sentence for murder as provided in Section 204 of the Penal Code is inconsistent with the Constitution. In the premises the sentence of death provided in Section 204 of the Penal Code is a discretionary maximum sentence.
5. Sentencing is a discretion of the trial court. In **Ambani –Vs- Republic (1990) KLR**, the High Court held that sentence imposed on an offender should be commensurate with the moral blameworthiness of the offence committed and that the court should take into account all the facts and circumstances of the case in its entirety before settling for a particular sentence.
6. Section 333 (2) of the Criminal Procedure Code requires a court when sentencing an accused person to take into account the period spent in custody awaiting trial. The accused herein was charged in May, 2016. He has therefore been in custody for a period of over 3 years.
7. I have considered other cases where sentences for murder were imposed. In **Republic –Vs- Stephen Wekesa Wasike (2014) eKLR Mutuku J.** sentenced the accused to 20 years imprisonment after convicting him of murder. In **Elizabeth Mwiyaithi Syengo –Vs- Republic (2019) eKLR** where the accused had been sentenced to death, Kemei J. re-sentenced the accused to 20 years imprisonment.
8. The deceased herein was the father to the accused. The accused killed his father by inflicting a serious injury on his head after a quarrel over planting of flowers in their compound. Upon considering all the circumstances of the case, the mitigation by the accused and the period spent in custody I sentence the accused to serve fifteen (15) years imprisonment.

Delivered, dated and signed in open court at Kakamega this 18th day of September, 2019.

J. NJAGI

JUDGE

In the presence of:

Miss Kibet for State

Miss Wilunda for accused

Accused - present

Court Assistant - George

14 days right of appeal.