



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL CASE NO. 33 OF 2013**

**REPUBLIC.....STATE**

**VERSUS**

**LAILAI MWANIK .....ACCUSED**

**SENTENCE RULING**

1. The Accused Person, Lailai Mwanik, was charged and convicted with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence were that it is alleged that on the 23<sup>rd</sup> day of March 2013 at Paukavava village in Narok North District within Narok County, the Accused Person murdered Matura Mwanik (“Deceased”).
2. The three Prosecution witnesses called showed that the Accused Person and the Deceased were cousins. On 23/03/2013 in the afternoon, the Accused Person visited the home of the Deceased where he requested for some muratina. The Deceased declined to serve him even though he (the Deceased) and his wife were drinking. This appears to have enraged the Accused Person. He was so agitated that shortly thereafter, after hurling some insults at the Deceased, he attacked him with a sword slashing his neck without much further provocation. The Deceased’s wife, Priscillah, witnessed the whole episode in horrified trepidation. The Deceased died shortly thereafter.
3. All through the trial, the Accused Person maintained his innocence and claimed that the charges were trumped up because he was an illegitimate child: his mother was married when she had already born him. As such, he said, the Mwanik family had never been accepted him as a true member of the family.
4. However, finally, during the defence hearing, he admitted that he was drunk when he committed the offence. He claimed that both he and the Deceased were drunk that it was never his intention to kill his cousin, whom he described as his best friend. He said that he was very remorseful and that he sought for forgiveness and mercy. He said that not a day passes without him thinking about his actions and the death that resulted from them.
5. Mr. Joshua Mwaniki addressed the Court on behalf of the family of the Deceased. He said that the position of the family that the Accused Person should be sent to prison for life since he killed their brother in cold blood. He said that the children of the Deceased are really suffering as a result of the death.
6. Ms. Cheruto, Counsel for the Accused Person, told the Court that the Accused Person is a first offender (as confirmed by the Precutor) and that he was two wives and eight children who all rely on him. She begged for lenience.
7. I have now considered all the mitigating and aggravating circumstances in the case.
8. In considering the appropriate sentence, I have considered the following as the mitigating circumstances in this case:
  - a. The Accused Person is a first offender;
  - b. The Accused Person appears to be demonstrably remorseful;
  - c. He is a family man with two wives and children who rely on him for their livelihoods;
  - d. Fourth, the circumstances in which the homicide happened indicate that the Accused Person had not intricately pre-planned his use of violence.

9. As an aggravating circumstances, however, while there was no gratuitous use of violence; I have noted the particularly cruel manner in which the killing happened. It is made doubly so by the fact that it was done in the Deceased's home – which is supposed to be his own castle. In this case, it was the Accused Person who was both the provoker and the attacker.

10. I have also taken into consideration the sentiments of the Deceased's family and the impact the death has had on them.

11. The crime committed was a serious one – and the Court found as a fact that it was pre-meditated. The use of deadly violence by the Accused Person in the circumstances of this case was clearly unwarranted. I have also taken serious consideration of the personal circumstances of the Accused Person. Still, I am persuaded that the circumstances of this case call for a custodial sentence as the society's mechanism for signaling categorical denunciation of the Accused Person's conduct. I believe that the circumstances are such that incarceration is the only suitable way of expressing society's condemnation of the Accused Person's conduct or deter similar conduct in the future.

**12. Consequently, in my view, a fit sentence that properly balances the mitigating circumstances with the aggravating circumstances is a sentence of fifteen (15) years imprisonment. Accordingly, I sentence the Accused Person to fifteen (15) years imprisonment. In coming up with this sentence, I have taken into consideration any period the Accused Person spent in custody.**

13. Orders accordingly.

**Dated and delivered at Nakuru this 4<sup>th</sup> day of September, 2019**

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**JOEL NGUGI**

**JUDGE**