



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO 109 OF 2013

REPUBLICRESPONDENT

VERSUS

DAVID MUGAMBI PIUSACCUSED

SENTENCE

1. The convict was on 25th day of June, 2019 found guilty of murder of **PATRICK KAYONGI JULIUS** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The court is now called upon to pass an appropriate, adequate and proportionate sentence as provided for under **Section 204** of the **Penal Code** as read together with the Judgement of the Supreme Court **Petition No. 15 & 16 of 2015 (consolidated), FRANCIS K. MURUATETU & ANOTHER v REPUBLIC [2017] eKLR**.

2. In compliance with the Sentencing Policy Guidelines the court called for a Pre-sentencing report dated 17/07/2010 in which the following issues were highlighted:-

§ The convict was born in 1986, attended K.K. Mbathai Primary School and dropped out of school in 2003 before sitting for his KCPE. He then came to Nairobi where he joined *Miraa* business. At the time of the commission of the offence, he was not married but had a girl friend with whom they had one child.

§ **HOME REPORT:** Before his arrest the convict was peace loving, hardworking and assisted his family financially. The family sought lenient sentence preferably non-custodial to enable him take care of his young child. They stated that the convict had inadequate stress coping mechanism and if imprisoned might go into depression.

VICTIM IMPACT STATEMENT

§ The deceased was aged 37 years, the first born in a family of eight and was single at the time of his death. The family had decided to forgive the convict after they were approached by the elders. They sought for leniency and a second chance for the convict.

ATTITUDE TOWARDS THE OFFENCE

§ The convict denied commission of the offence saying that the deceased was injured by unknown persons who left him in front of his shop though he sought leniency now that he had been convicted of the offence.

RECOMMENDATION:-

§ The social inquiry revealed that the families of the accused and the deceased had talked and unanimously agreed to make truce since they share the same clan. The convict was well spoken of as having been of good conduct even when he was out on bond. They sought for non-custodial sentence.

3. The sentencing objectives as per the Judiciary Sentencing Policy Guidelines 4.1 are 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/her 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.

5. Community protection: to protect the community by incapacitating the offender.

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

7. In this matter, the death of the deceased was uncalled for. He was a friend of the convict with whom they were engaged in the same business of selling *mirra*. The convict had challenged the deceased to a fight which he declined and instead of leaving the deceased who seemed to had been a peace loving citizen, the convict followed and stabbed him without any provocation at all. Whereas the families have reconciled and sought for non-custodial sentence and whereas it is indicated that the convict might fall into depression if given a custodial sentence, his action ought to be condemned so as to act as deterrence to other would be offenders.

8. I am therefore of the considered view that the best sentencing objective herein would be deterrence and denunciation which can only be achieved through custodial sentencing which in any event must be proportionate to the offence committed. Having found as a fact that the death of the deceased was uncalled for and reckless on the part of the convict, taking into account that the court now has a under discretion on sentence, I am of the considered view and find that an imprisonment period of ten (10) years would be proportionate to the offence herein.

ORDER

9. The convict is therefore sentenced to imprisonment period of ten (10) years from 13th November 2013 when he first appeared in court, having taken into account the provisions to **Section 333 (2)** of the **Criminal Procedure Code** and it is so ordered. The convict has a right of appeal on both conviction and sentence while the State has a right of appeal on sentence and it is so ordered.

Dated, delivered and signed at Nairobi this 15th day of October, 2019.

J. WAKIAGA

JUDGE

In the presence of:-

Mr. Okeyo for the State

Mr. Farah for Wakaba for the accused

Accused present

Court Assistant - Karwitha