



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO 44 OF 2016

REPUBLICRESPONDENT

VERSUS

PAMELA INDIATSI ACHURA1ST ACCUSED

ESTHER AKINYI ANDATI.....2ND ACCUSED

SENTENCE

1. The convicts were found guilty and convicted of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The Court is now called upon to determine an appropriate, proportionate and suitable sentence thereon.

MITIGATION

2. Upon their conviction the convicts through their Advocate on record Ms. Nyamongo stated in mitigation that the 1st convict was a standard eight graduate aged 39 years and a mother of three children aged thirteen (13), eight (8) and three (3) years respectively, who were now under the care of her aged mother. At the time of her arrest she was working as a house help, got married but the marriage did not work out. It was contended that she had been in custody for a period of four (4) years during which period of time she met salvation, was baptized into the Seventh Day Adventist Church where she was a deaconess. She had undergone short Theological courses and sought for leniency.

3. On the second convict, it was stated that she was a class eight (8) graduate, a single mother of two children aged ten (10) and four (4) years respectively. She was a trained salonist and was supporting her children who were now living with her aged mother. While in prison she had developed high blood pressure and ulcers. She was in charge of discipline at the prisons.

4. Ms. Gikonyo for the State stated that there was no previous record on the convicts who should therefore be treated as first offenders but submitted there was a life which was lost through the actions of the convicts who should therefore be sentenced to death.

PRE-SENTENCING REPORT

5. In compliance with the Judiciary Sentencing Policy Guidelines, the Court called for a Pre-sentencing report which were submitted and in which the following were stated:-

1ST CONVICT

- She was born in November 26th 1980 in Butere-Mumias Kakamega County.
- She came to Nairobi after her KCPE examination and was employed in a hotel in Madaraka which was brought down by Nairobi City Council.
- She was at the time of the offence doing laundry casual jobs around Lavington while residing in Kibra and later in Babadogo. She was married but parted ways with her husband due to irreconcilable differences in 2015.
- On the material day she went to visit her sister-in-law in the company of her brother’s mistress and while in the house they disagreed and a fight ensued. They took off when the mother of the deceased raised alarm.
- It was stated on the Impact Statement that both parents of the deceased had forgiven her. She therefore sought for lenient sentence.

2ND CONVICT

- She was born in 27th December 1988 in Kakamega County and sat for her KCPE in 2006 before coming to Nairobi where she was employed as a house help.
- At the time of her arrest she was working at a salon in Lang'ata while residing in Kangemi. She had two children.
- On the Victim Impact it was stated that the parents of the deceased had forgiven her.
- She was remorseful, regretted the loss of life and prayed for leniency taking into account the fact that she had been in custody for three (3) years.

SENTENCING OBJECTIVES

6. The sentencing objectives have been documented in the Kenya Judiciary Sentencing Policy Guidelines 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. While passing sentence the Court is always called upon to have these objectives in mind. Any lawful sentencing passed by the Court must take into account the nature of the crime and the manner of its commission, the motive which impelled it and the character and antecedent of the accused. The **Muruatetu case** has given each Judge a wider discretion in award of sentence with the statutory limits. Each Judge therefore will have to exercise discretion according to his own judgement and the circumstances of each case and as guided by the principles set out in the Judiciary Sentencing Policy Guidelines.

8. The Supreme Court of India in the case of **ALISTER ANTONY PAREIRA v STATE OF MAHARASHTRA [2012] 2SCC 648** had this to say:-

“Sentencing is an important test in matters of crime. One of the prime objectives of the criminal law is the imposition of an appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is done. There is no straight jacket formula for sentencing of an accused on proof of crime. The courts have involved certain principles; The twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.”

9. The Supreme Court of India in the case of **SHAILESH JASVANTBHAI & ANOTHER v STATE OF GUJURAT & OTHERS [2006] 2SCC 359** had this to say on sentencing objectives:-

“In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.”

DETERMINATION

10. In this cause, the victim herein was an innocent helpless child who did not have any idea that the 2nd convict was his father's “side dish” “*Mpango wa kando*”. He had no idea that his father had a child with the same. He did not know that his father had fired the 1st convict from his business having been found with stolen items therefrom. What makes this cause too sad is the fact that the 1st convict was an aunt to the victim and that they attacked the victim and his mother in the sanctity of their home.

11. This crime is further uncommon in that the 2nd convict having known all along that the father of the victim was married, decided to enter into a romantic relationship with the same and instead of accepting her position “as the other woman”, in an apparent revenge mission with the assistance of the 1st convict who was a sister to her lover, decided to attack the mother of the victim either to kill her so as to remain with the man or to force the man to take her over. They should have known better that life is a mirror and we find ourselves reflected in our associates.

12. Whereas the convicts have sought leniency, any sentence passed by this Court has to be fair to the convicts, the victims as well as to the society at large, the convicts must realize that the crime committed by them has not only created a dent in their life but also a concavity in the social fabric. If all “*mpango wakandos*” were to hunt down the children of their “sponsors”, the society will come to an end, as we are now living in a sinful world where sin has been given romantic names and titles and both men and women live in illicit unions as a matter of right.

13. This crime was premeditated and well planned. The convicts had carried with themselves inflammable substances and they surely knew what they were going to do. The child had done no harm to both of them. The mother of the child had also done no harm save for the fact that she had won the heart of the man the 2nd convict later set her eyes upon. She then recruited the sister of the man in her evil plans.

14. I am therefore of the considered view and hold that deterrence sentence combined with rehabilitation will be the most appropriate sentence herein. I would therefore sentence the convicts to a ten (10) years sentence to be served as follows:-

a. Three (3) years period when they were in remand custody considered served.

b. Four (4) years imprisonment for further rehabilitation within the prison rehabilitation programs as it is clear that they have benefited from those programs while in remand and to act as deterrence to would be offenders in similar situations.

c. Three (3) years thereafter on probation for further rehabilitation and placement in society and it is so ordered.

15. The convicts have right of appeal both on conviction and sentence while the State has right of appeal on sentence.

Dated, delivered and signed at Nairobi this 19th day of November, 2019.

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J. WAKIAGA

JUDGE

In the presence of:-

Ms. Gikonyo for the State

Mrs. Nyamongo for the accused

Accused 1 and 2 present

Court Assistant - Karwitha