



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAKURU**

**CRIMINAL CASE (MURDER) NO. 88 OF 2014**

**REPUBLIC.....PROSECUTOR**

**-VERSUS-**

**DAVID NJOROGE NJOGU.....RESPONDENT**

**SENTENCE**

The accused David Njoroge Njogu was convicted for the offence of murder of one Kennedy Waithingo on the 16<sup>th</sup> May 2019.

In his mitigation, he expressed remorseful and sought for forgiveness from the state and the deceased family urging that he has reformed and now a pastor and preacher. He has been in custody since August 2014.

The court was told that the accused has been unwell and had undergone abdominal surgery. He believes, if given a non-custodial sentence, he would be a useful person in his community.

The offence the accused committed was very serious, and completely unprovoked. He is a first offender.

The principles of sentencing are stated in the Judiciary Sentencing Policy, and buttressed by the Supreme Court of Kenya decision in **Francis Karioko Muruatetu and Another –vs- Republic, (2017) e KLR** among others.

The court while passing sentence is obligated to consider the following:

- Age of the offender
- Being a first offender
- Whether offender pleaded guilty
- Character and record of the offender
- Remorsefulness of the offender
- Possibility of reform and social re-adoption into the community.

**The core objectives of sentence are**

- Retribution,
- Deterrence
- Rehabilitation,
- Restorative justice

- Community protection
- Denunciation

**Restorative justice** seeks to address the needs arising from the criminal conduct such as the loss and damage and to promote a sense of responsibility through the offender's contribution towards the victim's needs. **In deterrence**, the offender is barred from committing such or similar offences. It discourages other persons from committing such offences.

**Rehabilitation** is made to enable the offender to reform from his criminal disposition and become a law abiding person.

I have taken into account the above, including the 5 years period the accused has been in custody.

The judicial sentencing guidelines are only advisory, and do not replace judicial discretion – **Johana Munyao Mweni (2018) e KLR**.

The offence of murder is punishable under **Section 204 of the Penal Code**. It is a minimum death sentence.

However, the minimum death sentence, indeed all minimum prescribed sentences take away judicial discretion, despite individual characters and circumstances.

The **Supreme Court in the Muruatetu case (Supra)**, declared **Section 204 Penal Code** as inconsistent with the Kenya Constitution, to the extent that it provides for the mandatory death sentence for murder. It however did not outlaw the death sentence, which remains a discretionary maximum punishment.

Upon exercise of judicial discretion, courts have since imposed other sentences for the offence of murder, but upon consideration of the circumstance of each.

In **Republic –vs- Joseph Kirui (2019) e KLR**, this court imposed life imprisonment to the offender.

In **Republic –vs- Evans Musioma Bichanga (2019) e KLR** a seven years imprisonment was imposed upon the offender.

Considering the unwarranted killing of the deceased by the accused hereof, and being guided by the principles stated above and upon consideration of the mitigating factors, I find that non-custodial sentence will not serve the purpose a sentence is made to serve. I therefore proceed to sentence the accused to serve twenty (20) years imprisonment.

Right of Appeal within fourteen (14) days explained.

**Delivered, Signed and Dated at Nakuru this 6<sup>th</sup> Day of November 2019.**

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**J.N. MULWA**

**JUDGE**