



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HIGH COURT CRIMINAL CASE NO 94 OF 2011

REPUBLICPROSECUTOR

VERSUS

TIMOTHY KIBOGA CHOCHI.....ACCUSED

SENTENCE

1. The convict **MR. TIMOTHY KIBOGA CHOCHI** was on 22nd day of February 2018 found guilty of the murder of **JESSEE MBUGUA KARANJA** on 28/11/2011 contrary to **Section 203** of the **Penal Code**.

2. The court is now called upon to decide what constitutes an appropriate, adequate and just sentence as provided for under **Section 204** of the **Penal Code** as read together with the Supreme Court decision in the case of **FRANCIS KARIOKO MURUATETU & ANOTHER v REPUBLIC, PETITION NO. 15 & 16 OF 2015, [2017] eKLR**.

3. On behalf of the convict it was submitted in mitigation that the same was aged 45 years married with five (5) children and was their sole bread winner. It was submitted that the same was remorseful for his action which was done while he was drunk. He had been in custody from 2011-2014 before being admitted to bond and therefore sought non-custodial sentence.

4. On behalf of the prosecution it was submitted that the family of the victim were still aggrieved by the loss of the deceased and therefore sought custodial sentence against the convict which will give them opportunity to heal.

5. In compliance with BAIL AND BOND POLICY GUIDELINES the court called for a Pre-Sentencing Report in which it was stated that the convict was raised up in a polygamous family and the responsibility of raising each child was left to their mothers. At the time of the incident he was employed as a driver with General Cargo and after being released on bond he worked as an Uber driver while operating a bar. He is married with five (5) children. He is asthmatic. The accused sought non-custodial sentence so as to help his family, socialize with his children and help his elderly mother. He is currently a Pastor with Full Redemption Christian Ministry.

6. On the Victim Impact Statement it was stated that the deceased was aged 32 years at the time of his death married with one child. The death of the deceased traumatized his wife who went into depression and became socially withdrawn causing her to lose employment.

7. In deciding on an appropriate sentence the court ought to look at the following mitigating factors:-

(a) age of the offender;

(b) whether first offender;

(c) whether the offender pleaded guilty;

(d) character and record of the offender;

(e) commission of the offence in response to gender-based violence;

(f) remorsefulness of the offender;

(g) the possibility of reform and social re-adaptation of the offender;

(h) any other factor that the Court considers relevant.

8. The objectives of sentencing as per the Judiciary of Kenya Sentencing Policy Guidelines are as follows:-

Paragraph 4.1

- 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.*

9. The court is also required to take into account the period when the offender was in custody while passing custodial sentence under **Section 333 (2)** of the **Criminal Procedure Code**.

10. With this in mind and having looked at the Pre-Sentencing Report wherein there are two competing objectives to be achieved, that is, rehabilitation of the offender and restorative justice, to address the needs arising from the criminal conduct of the offender taking into account the ages of both the offender and the victim, I am of the considered opinion and hold that a sentence of **ten (10)** years to be served as follows will be appropriate:-

- a) Seven (7) years imprisonment less the period the offender spent in custody before being released on bond to appease the family of the victim.*
- b) Three (3) years thereafter on probation to rehabilitate the offender so as to learn Anger Management and Dispute Resolution Mechanism.*

11. The offender has right of appeal on both conviction and sentence while the prosecution has right of appeal on sentence.

DATED, DELIVERED and SIGNED at Nairobi this 2nd day of May 2018.

.....

J. WAKIAGA

JUDGE

In the presence of:-

Miss Wegulu for the State

No appearance for the accused

Accused present

Court Assistant - Paul