



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**CRIMINAL CASE NO. 18 OF 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**KEVIN OMWANZA OUA *alias* JUNIOR.....ACCUSED**

**SENTENCE**

1. In my judgment in this matter dated 16<sup>th</sup> May 2018, I found the accused, Kevin Omwanza Oua, guilty of the offence of murder contrary to section 203 as read with section 204 of the Penal Code. It was my finding that he had, on the 26<sup>th</sup> day of April 2013, at Standard Bar in Sondu Township in Kericho West District of Kericho County, murdered Edwin Kibet Cheruiyot.

2. I further directed that a social inquiry report be prepared in respect of the accused to assist this court in reaching an appropriate sentence. A report has been prepared by the Probation Office, Kericho, and was filed on day of June 2018.

3. The report indicates that the accused is 24 years old, the sixth born in the family. He has a father and 5 siblings, but his mother is deceased. He is a first offender, and the probation report indicates that he has not demonstrated any criminal tendencies prior to the commission of this offence.

4. Section 204 of the Penal Code provides that the penalty on a conviction for murder is death. However, in its decision in **Francis Karioko Muruatetu vs Republic Supreme Court Petition Nos.15 and 16 of 2015**, the Supreme Court of Kenya held that the mandatory nature of the death penalty contained in section 204 of the Penal Code was unconstitutional. The Court held that the death sentence is not per se unconstitutional, but that imposing the death sentence without considering mitigating factors or extenuating circumstances violates the right to a fair trial guaranteed under Article 50 (2) of the Constitution.

5. The effect of this decision is that the court, where the sentence to be imposed for an offence is death, has a discretion to consider mitigating factors in determining what sentence to pass, and is not bound to impose the death penalty. The Court varied the **Sentencing Policy Guidelines** promulgated by the Judiciary in 2016 and provided the following guidelines with regard to mitigating factors that are applicable in a re-hearing sentence for a conviction on a murder charge:

- (a) The age of the offender;*
- (b) Being a 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.*

6. I believe that these guidelines provide appropriate criteria for the court to consider in passing sentence on a person convicted of the offence

of murder

7. In this case, the accused is a young man, 24 years of age. He is a first offender, and the social inquiry report indicates that he was remorseful for his actions. However, his actions which, from the evidence before the court were entirely unprovoked, led to the death of another promising young man. While he is remorseful, his actions robbed a family of a son, a brother, a husband and a father.

8. Taking all the above factors into consideration, I hereby sentence the accused to a term of imprisonment for 25 years.

**Dated Delivered and Signed at Kericho this 13<sup>th</sup> day of June, 2018.**

**MUMBI NGUGI**

**JUDGE**