



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL CASE NO. 51 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

JULIUS KIPROP *alias* SALIM RASHID.....ACCUSED

SENTENCE

1. In my judgment in this matter dated 18th April 2018, I found the accused, Julius Kiprop *alias* Salim Rashid guilty of the offence of murder contrary to section 203 as read with section 204 of the Penal Code. I found, after considering the prosecution evidence before me, that the prosecution had established beyond reasonable doubt that the accused had, with malice aforethought, on the 2nd day of November 2013 at Majengo area in Kericho District within Kericho County, murdered Mercy Cheronno.

2. 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 while the death penalty is not *per se* unconstitutional, 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. The effect of this decision, to my understanding, 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.

3. 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.***

4. 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.

5. Following my finding of guilt of the accused and conviction for the offence, I directed that a social inquiry report be prepared in respect of the accused to inform my decision in passing sentence. A report has been prepared by the Probation Office, Kericho, and was filed on 11th day of June 2018.

6. The report indicates that the accused is a 36 year old man. He is a first offender. The report notes that he has not been convicted before for any offence, and is not known to have any criminal tendencies.
7. The accused did not offer any mitigation following his conviction, nor did he express any remorse at the death of the deceased, with whom he was living as husband and wife. The only factors that this court can consider therefore in determining what sentence to impose on him can only be gleaned from the social inquiry report.
8. The accused in this case took the life of a young woman, not yet 30, whom he was co-habiting with. He strangled her in a drinking den, on a rainy night, leaving her body exposed to the elements. From the evidence, the accused had a history of domestic violence, and the post mortem report indicates that the deceased had old cut scars on the forehead, upper and lower limbs, as well as adhesions of brain matter which the doctor testified was due to either inflammation or trauma. These old scars were probably testament to a violent relationship with the accused, who, according to the evidence before court, used to beat the deceased and threaten to kill her.
9. Having taken the above matters into account and noting the lack of remorse on the part of the accused, I hereby sentence him to serve a term of imprisonment for forty years.

Dated Delivered and Signed at Kericho this 13th day of June 2018.

MUMBI NGUGI

JUDGE