

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAROK

CRIMINAL CASE NO. 1 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

KULANGASH OLE SENA.....ACCUSED

JUDGEMENT ON SENTENCE

1. The issue before me is whether or not I should impose a death or a non-death penalty upon the accused.
2. This has come about due to the decision of the *Supreme Court in Francis Karioko Muruatetu & another v. Republic (2017) eKLR*, in which that court held that the death penalty is constitutional. It further held that trial court has a discretion to impose the death penalty or a non-death penalty. The decision brought to an end over one century old judicial practice of sentencing to death upon conviction in respect of those offences that attract a sentence of death. Those offences include among others murder, capital robbery and treason.
3. In the instance case, the accused fatally stabbed the deceased because he found the deceased with his former girlfriend, who now was the girlfriend of the 28 years old deceased.
4. In mitigation, Mr. Kambo informed the court that the accused was aged 60 years old. He is married with one wife and two others who he inherited from his later brothers. He also informed the court that the accused is a first offender. He submitted that the accused is in need of rehabilitation and that the sentence of death is too harsh.
5. Ms. Nyaraita submitted that the court has discretion to compose a death penalty or a non-death penalty. She also submitted that the accused cannot take care of the family of the deceased. She also submitted that it was difficult to know how remorseful the accused is.
6. I have considered both the mitigating and aggravating circumstances. I find that the accused is a first offender married with three wives and eight children that he takes care of. The aggravating factors include the fact that the accused murdered a 28 years old deceased person. The deceased was a young man. The lady the accused and deceased were fighting over was not the wife of the accused.
7. The upshot of the foregoing is that I find that this is a case that calls for a non-death penalty. Furthermore, it calls for a deterrent sentence in respect of the accused and against potential offenders.
8. I therefore sentence the accused to life imprisonment.

Judgement on sentence dated, signed and delivered in open court at Narok this 17th day of July, 2018 in the presence of Ms. Nyaraita for the state and Mr. Langat holding brief for Mr. Kambo for the accused person.

J. M. BWONWONGA

JUDGE

17/7/2018