



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL CASE NO. 13 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

1. SIMON MUNYAO

2. MUTIO MUOKI.....ACCUSED

RULING ON SENTENCE

1. Both accused herein had been charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars were that on the 13th day of February 2014 at 1900 hrs at Katine village, Katine Sub-Location of Matungulu District within Machakos County murdered Peter Mwanzia Kimatu.

2. The accused persons were found guilty and convicted after a full trial pursuant to the judgement of this court dated 2nd May 2018.

3. Miss Kavita learned counsel for the defence presented mitigation on behalf of the accused persons herein. She submitted that both accused are remorseful for the death of the deceased and are first offenders. She further submitted that the accused attended the burial of the deceased before they were arrested. It was also submitted that the accused persons are elderly and with family members who depend on them for livelihood.

4. Mr. Machogu learned counsel for the state pointed out that the accused persons are first offenders.

5. This court called for pre sentence reports from the Machakos County Probation officer. The same were duly availed. The report on the first accused is dated 16/8/2018 while the one for the second accused is dated 15/8/2018. Both reports indicate that the accused persons had had a secret love affair which had angered the deceased who was a relative to the 2nd accused and in which the deceased's family did not approve since the 2nd accused had been a married woman to the deceased's relative. The reports further revealed that the families of the deceased as well as the community did not approve of the love affair between the accused persons and which led to the death of the deceased. Even though some negotiations at reconciliation and compensation were recently initiated by the respective clans, the same are yet to bear any fruits. All in all the reports left no doubt that the accused persons had been problematic in the village due to their persistence to continue with their love affair which unfortunately caused the death of the deceased. The reports therefore appear not to be in favour of a non custodial sentence as the accused have been labelled as social misfits within the society.

6. Following the decision of the Supreme Court in the case of FRANCIS KARIOKO MURUATETU & ANOTHER VS REPUBLIC [2017] eKLR the mandatory nature of the death sentence as provided for under Section 204 of the Penal Code was declared unconstitutional but that the same did not disturb the validity of the death sentence as contemplated under Article 26 (3) of the constitution. The said decision meant that a trial court is duty bound to consider mitigating factors presented by accused persons so that an appropriate sentence could be meted out. Both accused persons are noted to be first offenders and are remorseful for the offence. They are aged about 60 years old and have been in custody for about four years. The deceased on the other hand was aged about 40 years old at the time of his death. He died from a skull fracture which the doctor opined that the same led to an inter cerebral haemorrhage which eventually led to his death. It transpired from the evidence herein that the deceased who had voiced his opposition to the love affair between the accused persons was lawfully walking to his home when the two accused persons ganged up against him and attacked him leading to his death. The deceased's opposition to the love affair aforesaid did not warrant the kind of retaliation from the accused persons. It seems the accused persons wanted to silence the deceased for good. I find the deceased did not deserve to die just because of his opposition to the accused's love affair. The least the accused persons could have done in the circumstances was to merely inform him to keep off and mind his own business since each one of them was an adult in their own right but not to kill him. As a result a precious soul has been lost in circumstances which could have been avoided.

7. After considering all factors herein, I find a custodial sentence is suitable in the circumstances. Each accused is hereby ordered to serve a sentence of twenty years imprisonment.

Orders accordingly.

Dated and delivered at Machakos this 18th day of September 2018.

D. K. KEMEI

JUDGE

In the presence of:

Machogu - for the State

Nzioka for Kavita - for the accused

Munyao - Court Assistant