



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 33 OF 2006

REPUBLIC.....PROSECUTOR

VERSUS

JOHN NDIRANGU WAHOME.....ACCUSED

RULING ON SENTENCE

1. John Ndirangu Wahome (“Accused Person”) was convicted of the offence of murder in a judgment dated 28/05/2018. The case was heard by Justice Maureen Odero who wrote the judgment returning the guilty verdict. The Learned Judge had left Nakuru High Court Station by the time the judgment was ready, so I read it on her behalf on 14/06/2018. It also fell on me to conduct the sentence hearing.

2. The Accused Person was convicted of killing C W W, a child of eleven (11) years with premeditation on 07/05/2006.

3. The circumstances of the murder are contained in the judgment. The Accused Person was known to the Deceased child. He went to the Deceased child’s grandmother and got her permission to go with the Deceased to a friend’s place ostensibly to collect a hat. That was the last time the child was seen alive. She was later found in a maize and pyrethrum plantation dead – one leg chopped off; blood oozing from her private parts; and with soil stuffed in her mouth. Her clothes were strewn all over the field. The Accused Person was apprehended in hiding in the maize plantation. The conclusion was inescapable that the Accused Person defiled the child; stuffed soil in her mouth; and chopped her leg. The cause of death was cardiopulmonary failure due to asphyxia and defilement.

4. At the sentence hearing, Mr. Bernard Njoroge, an uncle to the Deceased child addressed the Court on behalf of the family of the Deceased. He urged the Court to jail the Accused Person for life given the trauma he had caused the family of the Deceased.

5. Mr. Chigiti, Prosecution Counsel, concurred. He pointed out that the victim was only 11 years old and that she died a cruel and painful death at the hands of the Accused Person. Further, Mr. Chigiti reminded the Court that the Accused Person hid the body after the killing which should be treated as an aggravating circumstance.

6. On his part, Mr. Maragia, Learned Counsel for the Accused Person urged for leniency. He urged the Court to temper justice with mercy. He submitted that the Accused Person is a first offender and that he is remorseful. He also has a child of tender years; and is the sole bread winner of the family. Mr. Maragia submitted that the Court should take into account that the Accused Person was in custody between 2006 and 2012. Lastly, Mr. Maragia submitted that the Accused Person has greatly reformed.

7. I have now considered all these submissions and all the relevant factors.

8. I have noted that the Accused Person is a first offender – and that his counsel says he is remorseful. I had no occasion to determine if that remorse was genuine since only Counsel addressed me. I have also noted his family situation.

9. However, there are glaring aggravating circumstances in this case. They include the following:

a. First, the murder was committed in a particularly heinous and cruel manner: the Deceased was defiled and then stuffed with soil. This kind of atavistic brutality calls for society’s highest form of condemnation;

b. Second, the victim was a child, and, therefore, a member of a vulnerable group. This aggravation is compounded by the fact that the Accused Person enjoyed the trust of the grandmother of the Deceased as well as the Deceased and he took advantage of that trust;

c. Third, the Accused Person attempted to hide the body after committing the offence perhaps in the hope that it would never be

found; and

d. Fourth, the circumstances point to a well-calculated scheme and not just spontaneous violence. The Accused Person concocted a story in order to gain the permission of the victim's grandmother to remove the victim from home; then he tricked the victim's brother to remain behind so that he could implement his scheme.

10. Taking all these factors into consideration and having looked at comparable cases, I have come to the conclusion that a custodial sentence is merited as the only suitable way of expressing society's condemnation of the Accused Person's conduct and deter similar conduct in the future. Having considered all the mitigating circumstances and aggravating circumstances, I am of the view that a substantial custodial sentence of thirty years is the appropriate sentence to match the barbarity of the Accused Person's conduct and its effect on the victim's family and the society. Given the Accused Person's unprovoked attack on a child, there is an extra need to protect the society from the Accused Person.

11. Consequently, in my view, a fit sentence that properly balances the mitigating circumstances with the aggravating circumstances is a sentence of thirty years imprisonment and I, accordingly, sentence the Accused Person to that period. In coming up with this sentence, I have already taken into consideration that the Accused Person was in custody from 2006 to 2012.

12. Orders accordingly.

Dated and Delivered at Nakuru this 18th day of October, 2018.

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JOEL NGUGI

JUDGE