



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HIGH COURT CRIMINAL CASE NO 97 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

DANIEL MAINGI SILA.....ACCUSED

SENTENCE

1. The convict **DANIEL MAINGI SILA** was on 3rd day of May 2018 convicted of the murder of **R.M.K.** on 1st day of October, 2014 contrary to **Section 203** as read with **Section 204** of the **Criminal Procedure Code**. The court is now called upon to decide an appropriate, just and adequate sentence as per the provisions of **Section 204** of the **Penal Code** as read with the Supreme Court decision thereon in **FRANCIS KARIOKO MURUATETU & ANOTHER v REPUBLIC, PETITION NO. 15 & 16 OF 2016** reported in [2017] eKLR.

2. In mitigation, the convict through his Advocate on record Mr. Kimeu submitted that the same was twenty five (25) years old, the only son of his parents who had been providing financial support to the family which stood to lose the said support. He was remorseful and sought to be given another chance as he had suffered health problems while in custody.

3. The prosecution on the other hand submitted that the accused had murdered the deceased mercilessly by stabbing her on the heart leaving behind a young daughter and husband. She therefore sought for death sentence as a deterrence.

4. In compliance with the Judiciary Sentencing Policy Guidelines and the Victim Protection Act, the court ordered for Pre-sentencing report which was filed and in which it was stated that the convict completed his Primary education in 2010 but was unable to proceed to Secondary school due to financial constraints. In the year 2014 he secured a part time job where he was working as at the time of his arrest. He admitted that he was in a relationship with the deceased who had separated with her husband and that on the material day the lady decided to go back to her husband and later demanded her things from him and a heated argument broke between them before he picked up a knife and stabbed her three times. It was stated that the convict was supportive of his family who sought lenient sentence for him as they were willing to have him integrated into the family.

5. On the Victim Impact Statement, the husband stated that the deceased was a good person and he was yet to heal from the death of his wife who was killed in his house. He now finds it difficult to bring up their only child and had to relocate to the village.

6. The objectives of sentencing as per the Judiciary Sentencing Policy Guidelines 4.1 are as follows:-

1) Retribution: to punish the offender for his/her criminal conduct in a just manner.

2) Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

3) Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law abiding person.

4) Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.

5) Community protection: to protect the community by incapacitating the offender.

6) Denunciation: to communicate the community's condemnation of the criminal conduct.

7. From the circumstances of this offence and as stated in the Judgement herein the convict was in an extra marital relationship with the

deceased who had at that time separated with her husband. The convict had a very low opinion of the deceased husband and believed he was better than the same whom he thought could only afford to buy for the deceased “sugarcane” and “pineapples”. When the deceased came to her senses and decided to go back to her first love the accused could not take it believing that it was either himself or nobody else.

8. This court has said before and will repeat that no man however mighty he is has a right over any woman’s decision to fall in and out of love with him. The convict had his chance with the deceased and it was the deceased right to leave him either to go back to her husband or to move on with somebody else and the convict was expected to count his gains and losses and move on. The convict had no business in stopping the deceased from following her heart to go back to her husband.

9. The death of the deceased was uncalled for and senseless to say the least. The convict having taken somebody’s wife should have known and was indeed expected to know that what comes around goes around. The bible in Proverbs 5:18 reminded the husband of the deceased “*to rejoice in the wife of your youth*” and rejoicing was cut short by the unlawful act of the convict. Proverbs 6:32 (ESV) states that “*he who commits adultery lacks sense, he who does it destroys himself*”.

10. I have taken into account the conduct of the convict before, at the time of the commission of the offence and thereafter and have come to the conclusion that a deterrence sentence to act as a warning to the offender and would be adulterous is called for herein and to act as a warning that no man has any right over any woman to follow her dream which as Lupita Nyong'o says “are all” valid. Having taken into account the material placed before me, the age of the convict and the Victim Impact Statement, I am of the considered opinion and hold that an imprisonment term would be the most appropriate sentence herein.

11. The convict is therefore sentenced to an imprisonment term of thirty five (35) years with effect from 28/10/2014 when he first took his plea under the provisions of **Section 333 (2)** of the **Criminal Procedure Code** and it is so ordered.

12. The convict has a right of appeal both on sentence and conviction while the prosecution has a right of appeal on sentence.

Dated, delivered and signed at Nairobi this 16th day of October, 2018.

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J. WAKIAGA

JUDGE

In the presence of:-

Miss Wegulu for the State

Mrs. Makau for the accused

Accused present

Court Assistant - Karwitha