



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCR. NO. 103 OF 2017

REPUBLIC.....APPELLANT

-VERSUS-

DANIEL KITSAO.....RESPONDENT

SENTENCING

INTRODUCTION

1. The accused was charged with offence of Murder contrary to Section 203 as read with 204 of the Penal Code.
- 2 The particulars being that on 27/01/2013, at annex Makuti Bar and Restaurant Lodgings in Mtito Andei Township, Kibwezi District within Makueni County murdered Monicha Matheka.
3. The circumstances surrounding the murder in the instant matter are set out in the judgment. He was convicted with the offence charged.
4. In mitigation via his advocate the accused says;
 - He is the first offender.
 - He is single.
 - He is remorseful and repentant.
 - He has been in custody since 27/01/2013 (about 5 years or so).
 - Relying on the case of **Petition No. 15/2015 SCOK Murwateti & Anor –Vs- Republic and Others**, urges the court to mete out sentence appropriately without being constrained to the traditional death sentence which prior to above petition was mandatory.
5. The prosecution led by Mr. Kihara lamented that there are a lot of murders taking place thus court should award deterrent sentence.
6. In Murwateti case Supra the SCOK held that;

“.....Section 204 Penal Code is in consistent with the constitution and invalid to the extent that it provides for the mandatory death sentence for murder. For avoidance of doubt, this decision does not outlaw death penalty, which is still applicable as discretionary maximum sentence.”
7. The court issued guidelines with regard to mitigating factors in re-hearing sentence for conviction of a murder charge;
 - Age of offender.
 - Being 1st offender.
 - Whether offender pleaded guilty.
 - Character and record of the offender.
 - Commission of the offence in response to gender based violence.
 - Remorsefulness of the offender.
 - The possibility of reform and social re-adaptation of the offender.
 - Any other factor that the court considers relevant.
8. The court notes that after killing the deceased, the accused was arrested in the room with the deceased body but throughout the trial, he

denied ever killing the deceased.

9. He claimed to have gone to see the sources of some screams in the bar when he was arrested. He persisted on proving a defence of alibi.

10. He now says he is remorseful and repentant and has been in custody since 27/01/2013 and that he is 26 years and single.

11. The court has taken into account all the above factors. One thing he never says and we may never know, is why he killed the deceased whom he did enter room to spend with in a lodging.

12. The court taking all factors into account and the circumstances of the instant case, makes the following order in sentencing;

- The accused is sentenced to 30 years imprisonment to run from date of arrest, 27/01/2013.

SIGNED, DATED AND DELIVERED THIS 15TH DAY OF OCTOBER 2018, IN OPEN COURT.

.....

C. KARIUKI

JUDGE