

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MIGORI

CRIMINAL CASE NO. 105 OF 2014

REPUBLIC.....PROSECUTOR

-versus-

PAUL OTIENO NDEJWE.....ACCUSED

SENTENCE

1. The accused person herein, **Paul Otieno Ndejwe**, was charged alongside a co-accused with the murder of one **Dominic Osanbo Oginya** (hereinafter referred to as '**the deceased**'). He denied the charge and a trial was conducted which culminated with a conviction. He was sentenced to suffer death.

2. The accused person thereafter petitioned the mandatory nature of the death sentence vide **Migori High Court Constitutional Petition No. 2 of 2018** which Petition was allowed and the death sentence set-aside. This Court then conducted fresh sentencing proceedings culminating with this sentence.

3. Laying a basis for a lenient sentence the accused person availed two witnesses. They were **David Owino Mbare (DW1)** and **Daniel Otieno Nyamula (DW2)** who both described the accused person as a very humble and law-abiding citizen since childhood. DW1 was the accused person's teacher who taught him sometimes in 1983 at Sony Complex Primary School. DW2 was in the same class with the accused person way back in 1984. Both lost contact with the accused person in school and hence could not attest to his life thereafter.

4. The prosecution submitted that the circumstances of the case called for a severe and deterrent sentence since the murder was carried out in such an inhumane manner and the family of the deceased is yet to go through the ordeal especially the son to the deceased who only survived by the grace of God. The prosecution further stated, and so admitted by the accused person, that the accused person was serving a 20 years' imprisonment term resulting from a conviction on the offence of robbery of violence which was reduced to simple robbery by the Court of Appeal.

5. This Court called for a Pre-Sentence Report whose contents are duly noted. The judgment captured the unique circumstances of the case and the role played by the accused person as the leader of the gang. Whereas the accused person prayed for leniency on one hand, the family of the deceased on the other hand is yet to come to terms with the murder of the deceased which was undertaken by the accused person who is their neighbour and a clan member. Further, no reconciliation has since been initiated by the family of the accused person. Simply put, the matter has all along been left in the hands of the Court.

6. In balancing the interests of each side and the scales of justice this Court is of the considered view that a custodial sentence shall not only serve the interests of justice but also give more room to the family of the deceased to heal given that no reconciliation has since been attempted. Needless to say, the accused person has a criminal record on violence related offence.

7. It is on that background that this Court finds a sentence of 40 years' imprisonment fair and so sentences the accused person accordingly. For avoidance of doubt, the sentence shall be deemed to run from the date the accused person was sentenced to suffer death.

8. Those are the orders of this Court.

DELIVERED, DATED and SIGNED at MIGORI this 11th day of October 2018.

A. C. MRIMA

JUDGE

Ruling delivered in open Court and in the presence of: -

Paul Otieno Ndejwe, the Accused person.

Mr. Joseph Kimanthi, Senior Principal Prosecution Counsel instructed by the Office of the Director of Public Prosecutions for the State.

Evelyne Nyauke – Court Assistant.