



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CRIMINAL CASE NO. 58 OF 2011**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**KILONZI KITHOME.....1<sup>ST</sup> ACCUSED**

**BENSON MULEI WAMBUA.....2<sup>ND</sup> ACCUSED**

**RULING ON SENTENCE**

1. The accused herein **BENSON MULEI WAMBUA** had been charged together with another who has since been acquitted with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars were that on the night of 25<sup>th</sup> and 26<sup>th</sup> day of August 2011 at Njuguini village, Athi River District within Machakos county, jointly murdered **JEMIMA MITI KITHOME** alias **DORIS KITHOME**.

2. The accused herein Benson Mulei Wambua was found guilty and convicted after a full trial pursuant to the judgement of this court dated 23<sup>rd</sup> July 2018.

3. Mr. Mwangangi learned counsel for the defence presented mitigation on behalf of the accused herein. He submitted that the accused who is currently aged 34 years old is the only breadwinner for his elderly mother who is a widow. He further submitted that a lenient sentence be meted out against the accused in line with the Supreme Court guidelines in **Petition Number 15 of 2015 Francis Karioko Muruatetu & Others Vs Republic**.

4. There were no submissions by the learned counsel for the prosecution as regards the accused's past antecedents.

5. This court called for a victim impact statement as well as pre-sentence reports to be availed. A pre sentence report was later submitted by the Probation officer Athi River Sub-County. The same is dated 19<sup>th</sup> September 2018. The pre sentence report is to the effect that the deceased died as a result of a love triangle gone sour. The report revealed that the accused herein and the deceased were lovers and had intended to formalize the relationship as they had even visited the deceased's parents on two occasions. However, the entry of a third man into the picture complicated the accused's chances of marrying the deceased and which soured the relationship to the point that they had to part ways. The report also revealed that the accused who had opened a business for the deceased within Athi River area felt cheated by the deceased. The family of the accused and the community did not have anything adverse against him and want this court to exercise leniency on him.

As regards the family of the deceased, the report indicates that the accused and the deceased had made some visits to them and notified them of their intention to marry each other. However the family of the deceased is reported to be unhappy at the turn of events upon learning that the accused had threatened to kill the deceased if he ever saw her with another man. The family of the deceased is reported to have surrendered their fate regarding the demise of the deceased to God.

Finally, the report indicated that the accused is still adamant that he did not participate in the killing of the deceased. This may explain the absence of any hint at remorsefulness by the accused during his mitigation. The pre sentence report is not in favour of a non custodial sentence.

6. The court record as well as the pre sentence report indicates that the accused has been in remand custody since the day of his arrest and arraignment for the last seven years.

7. Learned counsel for the defence has urged this court to consider the Supreme Court guidelines in the case of **Francis Karioko Muruatetu Vs Republic [2017] eKLR**. Indeed from the said decision a trial court is required to consider mitigating factors presented by accused persons who have already been convicted of capital offences so that an appropriate sentence could be meted out. It is noted that the accused herein is a first offender. He has been in remand custody for the last seven years. The deceased upon an autopsy being conducted is said to

have died as a result of traumatic asphyxia to the trachea and larynx. She was simply strangled on the neck and throat. The deceased was then a young vivacious lady at the prime of her career as a business woman but her life was snuffed out following a love triangle gone sour. At the time of the murder both the deceased and the accused had already parted ways. However, the accused whose personal documents had been withheld by the deceased and was thus a very bitter man having been edged out by a new lover to the deceased arriving at the scene and turning tables against him. Indeed matters of the heart are quite emotive but that notwithstanding, it was quite cruel for the accused to eliminate the deceased over the sour love relationship. It was not necessary for the simple reason that they could each have gone their separate ways and find love elsewhere. The deceased did not deserve to be killed by accused when he could as well move on with his life. In any case the two had not even formalized their union so as to lead credence that the deceased was his lawful wife to the exclusion of all other persons. Even if the accused had been angered by the deceased's alleged infidelity, he had no reason whatsoever to kill her. I find the deceased did not deserve to die just because of her decision to end the love relationship with the accused herein. As a result of the actions by the accused, a precocious soul has been lost in circumstances which could have been avoided.

8. As noted above, the accused has been in custody for the last seven years. I will take that into consideration. Considering all factors herein, I find a custodial sentence is suitable. In the circumstances, the accused herein **Benson Mulei Wambua** is hereby ordered to serve a sentence of fifteen years imprisonment.

**Dated and delivered at Machakos this 1<sup>st</sup> day of October, 2018.**

**D.K. KEMEI**

**JUDGE**

**In the presence of:-**

Machogu for the state

Muthama for Mwangangi - for the accused

Josephine - Court Assistant