



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL CASE NO. 66 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**BENJAMIN KAHINDI CHANGAWA.....1<sup>ST</sup> ACCUSED**

**STANLEY OKOTI.....2<sup>ND</sup> ACCUSED**

**RULING ON SENTENCE**

Benjamin Kahindi Changawa and Stanley Okoti have been tried and found guilty in three counts of murder contrary to section 203 as read with section 204 of the Penal Code. They are accused of killing Joseph Obongo Onchuru in Count 1, Geoffrey Nyabuto Mogoi in Count 2 and Amos Okenye Makori in Count 3 on the 7<sup>th</sup> October 2014 at M-Club in Kangemi within Nairobi County. After this court delivered its judgment on 1<sup>st</sup> of November 2018 Ms Ikol, the Prosecution Counsel informed the court that there were no previous criminal records in respect of the accused persons and asked the court to treat them as first offenders.

In his brief submissions in mitigation before the sentence, Mr. Mandala, learned counsel representing the two accused persons, told the court that Benjamin Kahindi Changawa has served the police force for 30 years in different units and has kept a clean record with regard to his professional duties; that there has never been any disciplinary proceedings against him; that the incident occurred when he was on official duty responding to a distress call; that he is a first offender; that he is married to one wife with four children and that his family depend on him for upkeep. Mr. Mandala further submitted that the accused is extremely remorseful for the unfortunate incident giving rise to the three charges and asked the court to exercise leniency in sentencing the accused.

On behalf of the Stanley Okoti, Mr. Mandala submitted that the accused has worked for the police service for 20 years with no criminal record; that he is married to one wife who is a housewife and that he has three children; that he is the sole bread winner for his family and also takes care of his widowed mother who suffers from diabetes and that his family live in Kabete Police Station Police Lines. It was further submitted that he is remorseful for this incident that occurred while he was on official duty and asked the court to consider a lenient sentence.

I have considered the mitigation of each of the accused persons. Both of them are remorseful for the events leading to these charges. Both seek lenient sentences. I have also taken into account the unfortunate circumstances leading to the death of the three deceased persons. While I bear in mind that the two accused persons were on duty when the shooting of the three deceased persons occurred and that they went to the scene of the shooting in response to a distress call, it is not lost to me that the two accused persons acted irresponsibly. Going by eye witness accounts of the witnesses who were present, the two accused persons faced no danger that would have necessitated them to use the excessive force that they used. Going by eye witness accounts two of the deceased persons, Geoffrey Nyabuto Mogoi and Amos Okenye Makori, had surrendered by lying on the ground and one deceased, Joseph Obongo Onchuru, had surrendered by lifting his pistol which was picked by one of the two accused persons. I have taken into account the fact that Joseph Obongo Onchuru did not fire his pistol either to the watchman and other workers of M-Club, even during the confrontation between him and the staff of M-Club and that he did not fire at the two accused persons.

Three lives were unnecessarily lost as a result of the actions of the accused persons. This court appreciates that the duty of a police officer is fraught with danger. However, a police officer, while performing his duties, must perform them responsibly and in compliance with the law in order to ensure that his actions do not endanger any one. In my considered view, justice can only be served in this case if this court gives the optimum penalty allowed by the law under Section 204 of the Penal Code for the offence of murder. I am alive to the applicable principles in sentencing an accused person charged with more than one count, especially when the penalty is death. The law is that once a person is sentenced to death on one count, the sentences on the other counts should be held in abeyance (see *Jeremiah Mathengi Mathinyo v. Republic [2007] eKLR*).

I have also consulted the *Sentencing Policy Guidelines, 2015*. The primary principle of proportionality in sentencing is as follows:

***“Proportionality: The sentence must be proportionate to the offending behaviour. The punishment must not be more or less than is merited in view of the gravity of the offence. Proportionality of the sentence to the offending behaviour is weighted in view of the actual, foreseeable and intended impact of offence as well as the responsibility of the offender.”***

With the above in mind, I hereby sentence Benjamin Kahindi Changawa and Stanley Okoti to death in the manner authorized by the law in each count. However, it is only the sentence in Count one (1) that shall be carried out. Sentences in Count 2 and Count 3 shall be held in abeyance. Orders shall issue accordingly.

**Delivered, dated and signed this 14<sup>th</sup> day of November 2018.**

**S. N. Mutuku**

**Judge**