

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 81 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JUMA NYAYO APERI Alias MUSTAFA.....ACCUSED

RULING ON SENTENCE

Juma Nyayo Aperi alias Mustafa was charged with the murder of Edward Onsongo contrary to section 203 as read with section 204 of the Penal Code. He was tried for the offence, found guilty and convicted of the same in a judgment delivered on 18th October 2018. After the delivery of the judgment the Prosecution Counsel, Mrs. Kinoti, told the court that she has not been provided with previous criminal records of the accused. She asked the court to treat the accused as a first offender.

This court invited the accused to make his submissions in mitigation. Mrs. Gulenywa, learned counsel representing the accused, submitted that the accused is aged 36 years and is married with three young children in Class 7, Class 4 and pre-unit and that he also takes care of three orphaned children belonging to his late sister in Class 2, Class 1 and the last one yet to join school. Counsel submitted that the accused suffers from acute back problems due to the injuries he suffered after he was attacked following the incident giving rise to this murder charge; that he suffers from stomach ulcers and that his wife is diabetic and suffers from hypertension. It was further submitted that the two parents of the accused are deceased and that he is the sole bread winner. This court was urged to put these factors into consideration while sentencing the accused.

I have taken the mitigating factors into account. I have also taken into account that Edward Onsongo is dead and nothing can compensate for a lost life. I note that the accused is not remorseful. Murder is an offence whose penalty is found in section 204 of the Penal Code. Death is the optimum penalty the court can meet out on an accused person that has been found guilty of murder. It is however not the only penalty because the court has the discretion to meet out any other sentence if circumstances favour such other penalty. As stated in my judgment the injuries suffered by the deceased were severe and concentrated around the head with the skull bearing the brunt of those injuries. The deceased must have suffered a very painful death. It is my view that the death of the deceased was unnecessary and that the accused should not have taken the law into his own hands no matter the reasons. It is my view therefore that justice will be served if the accused were to suffer a sentence that is commensurate with the suffering the deceased underwent, again bearing in mind that life of a human being is priceless. I therefore sentence the accused to suffer death in the manner authorized by the law. It is so ordered.

Delivered, dated and signed this 7th day of November 2018.

S. N. Mutuku

Judge