



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
HIGH COURT CRIMINAL CASE NO. 45 OF 2013

LESIT J

REPUBLIC.....PROSECUTION

VERSUS

ANTOINETTE UWINEZA ALIAS

MICHELINE UWABABYY...ACCUSED

RULING ON SENTENCE

1. The accused **ANTOINETTE UWINEZA ALIAS MICHELINE UWABABYYI** was convicted for the offence of murder contrary to **section 203** of the Penal Code.

2. I have considered that the learned prosecution counsel Ms. Onunga has treated the accused as a first offender as she did not have the previous records.

3. I have taken into consideration the period the accused spent in custody which is 3½ years before she was released on bond in 2016.

4. I have also considered the submissions by the defence counsel in mitigation. Mr. Swaka urged the court that the accused is a foreign national who is very young 31 years old, has no children and lost her parents at an early age. He therefore told the court that the accused has a whole life before her and given a chance she will start again in life.

5. He further urged the court that the accused is sickly with peptic ulcer hence unable to eat some kinds of food and that the accused is extremely remorseful.

Mr. Swaka further urged the court that the accused gave a sworn defence and poured out her heart to court and it should consider that the accused has a life ahead and it should not be taken away.

6. The learned defence counsel made reference to Muruatetu case and supplied it gives court to sentence accordingly by taking into account the mitigating factors.

He submitted that the sting of death penalty has been taken away in respect to fact that court has discretion.

Mr. Swaka urged the court that the defence is ready to have a probation officer examine the accused to

further guide court in passing an appropriate sentence. She will submit herself to whichever conditions court may impose especially to a non-custodial sentence. He asked the court be of law and of mercy.

7. I have taken into consideration the submissions by both the defence and the prosecution in mitigation and other considerations before sentence. I have taken into consideration the circumstances in which the deceased met her death. To say the least, it was gruesome and the act was malicious as she was brutally murdered in cold blood.

8. The accused through her deliberate actions caused two deaths. The deceased and a 7 months old foetus lost their lives.

9. I have considered that remorsefulness is not demonstrated at all. Even the words of the defence on behalf of the accused are clear. **“...that she is where she is as a result of the judgment of the court”**

10. The motive is not however clear. Even though the accused and the deceased were close friends, it is not clear why the accused turned against the deceased ending her life in such manner.

11. The full citation for the Supreme Court case cited by Mr. Swaka is **Francis Kariuki Muruatetu & another versus Republic and Others (2017) eKLR**. The Supreme Court in the **Muruatetu** case, supra sets out guidelines to assist the courts in the determination of the sentence where mitigation was not considered prior to the said case. The guidelines are as follows

“As a consequence of this decision, paragraph 6.4-6.7 of the guidelines are no longer applicable. To avoid a lacuna, the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

- (a) age of the offender;**
- (b) being a first offender;**
- (c) whether the offender pleaded guilty;**
- (d) character and record of the offender;**
- (e) commission of the offence in response to gender-based violence;**
- (f) remorsefulness of the offender;**
- (g) the possibility of reform and social re-adaptation of the offender;**
- (h) any other factor that the Court considers relevant.**

We wish to make it very clear that these guidelines in no way replace judicial discretion. They are advisory and not mandatory. They are geared to promoting consistency and transparency in sentencing hearings. They are also aimed at promoting public understanding of the sentencing process. This notwithstanding, we are obligated to point out here that paragraph 25 of the 2016 Judiciary Sentencing Policy Guidelines states that:

GUIDELINE JUDGMENTS

Where there are guideline judgments, that is, decisions from the superior courts on a sentencing principle, the subordinate courts are bound by it. It is the duty of the court to keep abreast with the guideline judgments pronounced. Equally, it is the duty of the prosecutor and defence counsel to inform the court of existing guideline judgments on an issue before it”.

12. The court has set out certain principles which should guide courts in sentencing, which I have applied in this case. The Supreme Court then dealt with the importance of pre-sentence hearing and entertainment of mitigation from the accused person, among others. The Court has made clear exactly how the mitigation of the accused person should be applied by the court before the accused is sentenced. The Court stated that;

‘It is during mitigation, after conviction and before sentencing, that the offenders’ version of events may be heavy with pathos necessitating the court to consider an aspect that may have been unclear during the trial process calling for pity more than censure or on the converse, impose the death penalty.’

13. I have taken into account what has been presented by the accused in this case, as her version of the events. Is her version of the events of the material day heavy with pathos that would necessitate this court to consider an aspect that may have been unclear during the trial process? Pathos means **‘anguish, bleakness, despair, tragedy, sadness’**. The accused has not set before court anything that can lead to a finding that there was an aspect of the case which remained unclear at the trial which her mitigation has illuminated. The events of the day were clear. Conversely the accused has not alleged that she acted out of any despair or anguish or bleakness or sadness or tragedy of any kind.

14. I find that the accused with others strangled the deceased with clear intention to cause her pain, suffering and death going by the manner in which she was murdered. I have taken into account that the deceased was strangled to death and head covered with a paper bag. The accused pressed the deceased’s stomach until the foetus was protruding in the vagina. These actions portray the mindset of the one who committed the offence.

15. Having considered all these factors I find that the appropriate sentence to pass to the accused for this offence will be life imprisonment.

16. Accordingly the accused is sentenced to life imprisonment

17. The accused has a right of appeal against conviction and sentence within 14 days from today.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 1st DAY OF NOVEMBER, 2018.

LESIIT J

JUDGE