

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL CASE NO. 15 OF 2015

REPUBLIC.....PROSECUTOR

Versus

IBRAHIM OMULO OWENGA.....ACCUSED

SENTENCING REMARKS AND VERDICT

This is a case where you Ibrahim Omulo Owenga appeared before this court charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code.

The background of the offence as projected by the thirteen witnesses summoned by the prosecution to rally evidence against you constituted the following: that on the 19/6/2013 at Olosoit Sub-Location in Loitokitok Subdistrict you lived together with the deceased as husband and wife. This fateful day was just like any other normal day for you and the deceased Grace. You went about your daily chores. In the course of the day you decided that you would have to arm yourself with a panga which you used to inflict multiple grievous harm upon her with no evidence of attack or provocation. The members of the neighbourhood and the public who heard the commotion and domestic violence in your house rushed to the scene and pleaded with you to stop inflicting bodily harm to the deceased. Despite your assurance that did not deter you from continual beating which eventually brought her life to a cruel and fatal end. In the meantime and within hours of her death you left her and substantially did nothing to assist or seek help from a medical provider. You persisted in moving on with your life as if nothing had happened to Grace – the deceased. When the police and members of the public visited your house it was found to have been locked from outside and the body of Grace – deceased herein on top of the bed. This is the house you occupied two of you with the deceased. That action according to my finding in the main judgment was well planned and executed on 19/6/2013. The motive as to why a life of a young lady aged 28 years could be brought to a premature end was never made crystal clear throughout the entire trial. That remains a secret in your heart.

This court has heard the mitigation as presented by Mr. Nyaata learned counsel on your behalf. Mr. Akula, the senior prosecution counsel submitted that you have no previous record nor any antecedents relevant to this indictment. I also called for pre-sentence report from the probation officer. The report captured your family background, circumstances of the offence, personal life and history together with the victim statement.

I have taken into account the circumstances broadly alluded to in mitigation, your personal circumstances, the fact that you are a first offender and above all you regret the occurrence of this incident. The crux of the judgement is to consider all those including the provisions on penalty of murder as prescribed by parliament under section 204 of the Penal Code. In my application of the law on sentencing by virtue of a finding of guilty and conviction under section 203 of the Penal Code. The provisions of section 204 within which the category of punishment falls under to be imposed against you ought to be applied.

The law on this aspect has been restated by the Court of Appeal in the case of **Joseph Njuguna Mwaura Cr. Appeal No. 5 of 2008** where the court affirmed that death sentence is a lawful sentence and mandatory sentence for the offence of murder contrary to section 203 of the Penal Code.

Bearing in mind all those various factors and the dicta in **Joseph Njuguna Mwaura Case (Supra)**, the sentence I pass for the charge of murder which I found you guilty and convicted you is that of death. Accordingly I sentence you under the provisions of section 204 of the Penal Code to the mandatory death

sentence. 14 days right of appeal explained to the Court of Appeal.

It is so ordered.

Dated, read and signed in open court at Kajiado on 16th day of March, 2017.

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R. NYAKUNDI

JUDGE

In the presence of:

Mr. Nyaata the defence counsel

Mr. Akula – senior prosecution counsel

Accused present

Mr. Mateli Court Assistant