



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 27 OF 2015**

**REPUBLIC.....PROSECUTOR**

**Versus**

**JOHN NDUNDA MUTUNGA.....ACCUSED**

**SENTENCING REMARKS AND VERDICT:**

John Ndunda Mutunga alias Tingili, you recall earlier on you were indicted with the offence of murder contrary to section 203 of the Penal Code where briefly the circumstances were that you killed your wife whom you used to stay with at Kitengela township.

This court heard the evidence presented by the prosecution witnesses. At the closer of the trial I reached a verdict that the prosecution proved a lesser offence of manslaughter contrary to section 202 of the Penal Code as read with section 205. In this case Eunice Syombua Mutunga aged about 45 years prior to her death had a relationship of trusteeship with you having lived together under the same roof. In a sudden change of events on 30/7/2013 you brought her life to a cruel end in the same house you shared and left her body without taking any steps to assist her see a medical doctor for the physical injuries inflicted by you.

I am satisfied that this is a clear case of domestic violence which resulted in death. The motive for the killing was presented as revolving over money which you continuously demanded during the inflicting of bodily harm. Throughout the trial you set up the defence of not knowing the person the court is taking about to have died in your hands. You persisted in that including pleading that you are a stranger to the indictment.

In sentencing you for this offence I have heard the submissions on mitigation from Mr. Mutavi, the defence counsel. The senior prosecution counsel also submitted that you are a first offender with no record of previous convictions. In scheduling sentencing hearings this court was unable to obtain the victim impact statement. It could have contributed in passing the sentence order in this offence you have been found guilty and convicted. The penalty for manslaughter is prescribed under section 205 of the Penal Code to be life imprisonment. It is an offence which parliament considered to belong to the category of serious offences where the loss of a human being is involved. Though the court was left with a measure of discretion the same ought to be exercised judiciously.

In determining the appropriate sentence I have considered that you are a first offender, there is no evidence of premeditations in causing the death of the deceased. It is also significant beforehand that you are a first offender. I also take note that since your indictment in 2013, you have been in remand custody pending conclusion of your trial. That is a period I will also factor in imposing sentence against you. In all these I am obligated not to lose sight of the aggravating factors in this case where you did nothing when you realized the deceased had suffered serious harm. Secondly it came out clearly that you even went as far as locking the body of the deceased inside the very house. The presumption I make in this regard may be the act was to gradually change the narrative on how the deceased met her death.

In passing sentence I bear in mind that the objectives of sentencing are founded on retribution, deterrence, prevention and rehabilitation. It is also trite that criminal sentences are intended to protect the public whether it is the quest of punishing the offender or with the objective of reforming him so that he turns up to be a law abiding citizen. Sentencing occupies a pivotal role in the administration of criminal justice in our country. The importance of securing and maintaining public confidence in the justice system cannot

be underscored. On my part taking all these factors into account I dissuade myself from sentencing you to life imprisonment. The sentence I pass against you is to serve eight (8) years imprisonment.

14 days right of appeal explained.

**Dated, delivered in open court at Kajiado on 11<sup>th</sup> day of May, 2017.**

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**R. NYAKUNDI**

**JUDGE**

**Representation:**

Mr. Mutavi for Kamolo for the accused present

Mr. Akula for the Director of Public Prosecutions present

Francis Court Assistant

Accused present