

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NUMBER 39 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

C L K.....ACCUSED

RULING ON SENTENCE

C L K has been tried and found guilty in two charges of murder in a judgment delivered on 12th April 2017. The two charges were brought under Section 203 as read with Section 204 of the Penal Code. The victims are two children, B B, a girl aged 5 years and A A, a boy aged 8 months. The accused and one P B are the parents of the two children. After the judgment was delivered, prosecution counsel informed the court that the accused did not have previous criminal records and is a first offender. The matter was deferred upon request by the defense counsel to 26th April 2017 for mitigation.

In mitigation the accused informed the court, through legal counsel Mrs. B. E Nyamongo, that she is aged 30 years; that she comes from Vihiga where she was born and brought up by a single mother who has since passed on due as breast cancer; that she has been married for eight years and had two children now deceased and that it is unfortunate that the incident in which her children were killed occurred. She however maintained that she was not involved in their death. She told the court that she has been in custody since her arrest and that while in custody she has undergone anger management courses. She asked the court to give her another chance in life by sentencing her to a none-custodial sentence.

I have considered the mitigation of the accused person. I have noted that she still claims that she did not commit the two crimes. This court has made its findings after taking into account all the evidence and considering the circumstances leading to the death of the two children.

The penalty for murder is provided by Section 204 of the Penal Code. This section is worded thus:

Any person convicted of murder shall be sentenced to death.

Plain reading of Section 204 of the Penal Code shows that the words are couched in mandatory terms. This court has no discretion to vary the death sentence imposed by Section 204 of the Penal Code (see **Joseph Njuguna Mwaura & 2 others v. Republic [2008] eKLR**). In view of the fact that our law does not provide an alternative penalty for murder, I have no choice in the matter than to impose the sentence provided by Section 204 of the Penal Code. The accused was convicted of two counts of murder. She is sentenced to death in Counts 1 and 2. However the sentence in Count 2 shall be held in abeyance. In respect to Count 1, the accused, C L K, shall suffer death 1 in the manner provided for by the law. Orders shall issue accordingly.

Dated, signed and delivered this 9th day of May 2017.

S. N. MUTUKU

JUDGE