



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL CASE NO. 8 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

GEOFFREY WAMBUA MUSAU alias MUTUA.....ACCUSED

SENTENCING REMARKS AND VERDICT

I now turn to the issue on sentence:

In this case you Geoffrey Wambua Musau alias Mutua has been found guilty and convicted of murder contrary to section 203 and punishable under section 204 of the Penal Code.

The brief circumstances which emerged after a lengthy trial were that Rebecca Wanjeru the deceased whom you murdered stayed with you as a husband/wife relationship. The deceased was at the time of her death aged 33 years old who had been blessed with a young child of about 1½ year old. The evidence showed you brought her life to a cruel end abandoned here by locking the house you share together during her lifetime. This conduct can maybe presumed to further the motive of killing was to ensure that by the time her body was discovered may it could have decomposed beyond recognition. As a husband to the deceased you were in a position expected to protect the deceased from any risk of serious grievous harm.

In this case Ms Mageto the learned counsel who represented you advanced mitigation on your behalf. Learned counsel alleged that this court should consider that you are remorseful and regret the offence alleging you are still in denial. Learned counsel urged to consider that though the offence is serious, I exercise leniency in coming up with an appropriate sentence.

I have also the sentiments by Mr. Akula – the senior prosecution counsel who informed the court you have no previous criminal record. Mr. Akula further asked this court to take into account the principles of criminal law and that the offence of murder is a very serious crime which calls for appropriate sentence to mark the gravity of the offence.

This court made effort to have the victim impact statement from the deceased family but due to logistical issues that never materialized. The pre-sentence in relation to you which could have factored your profile, family background and the community input also was not availed by the probation officer.

In passing sentence in this case I shall approach it by first discussing the principles of sentencing as set out in various persuasive authorities. In the case of **Republic v Bull Cr. Appeal 1951** the court laid down the guiding principles as follows:

“In deciding the appropriate sentence a court should always be guided by certain

considerations. The first and foremost is the public interest. The criminal law is publicly enforced not only with the object of punishing crime but also in the hope of preventing it.”

In the case of **Bachan Singh v State of Punjab [1980] 2 S CC 684** the Supreme Court observed on death sentence and held thus:

“Extreme depravity constitute legitimate special reason for award of death sentence and further held: that in many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments.”

If murder involves exceptional depravity, it shall be an aggravating circumstance for imposition of a death penalty. In our own jurisdiction in the case of **Joseph Njuguna Mwaura & 2 Others v Republic Cr. Appeal No. 5 of 2008** the Court of Appeal has affirmed the death penalty as a lawful sentence for heinous crime like robbery with violence, treason and murder.

Applying the above principles in your case I have taken into account the mitigations and further that you are a first offender with no previous criminal record. Nevertheless I am obligated to apply the law on sentence on murder as prescribed by parliament under section 204 of the Penal Code.

As a result I sentence you to suffer death as per law established. 14 days right of appeal to the Court of Appeal.

Dated, delivered and signed in open court at Kajiado this 5th day of May, 2017.

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R. NYAKUNDI

JUDGE

In the presence of:

Ms Mageto for the accused present

Mr. Akula for Director of Public Prosecutions

Accused present

Mr. Mateli Court Assistant