

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 99 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

WYCLIFF MWILU MUTINDA.....ACCUSED

SENTENCE

Wycliff Mwilu Mutinda was charged with murder contrary to section 203 as read with section 204 of the Penal Code where it was alleged that on the night of 26th and 27th July 2013 at Kiamumbi area, Kahawa West in Kasarani within Nairobi County with another not before the court he murdered John Ndungu Kamande. The accused was tried and found not guilty of murder in a judgement delivered in court on 4th February 2016. He was found guilty of being an accessory after the fact to murder contrary to section 222 of the Penal Code.

In mitigation before the sentence the accused told the court that he is remorseful; that he suffers from asthma; that he has a family with young children aged 9 and 6 years; that he has elderly parents whom he takes care of as the sole bread winner; that he has been in remand for the entire period his case was pending in court and that during that time he became born again and enrolled for some courses for which he achieved a Certificate and Diploma. The accused asked the court to consider non-custodial sentence.

The prosecution counsel informed the court that she did not have previous criminal records of the accused person and asked the court to treat him as a first offender.

I have considered the mitigation and the fact that the accused is a first offender. I have noted copies of the Certificate and Diploma both from Emmaus Bible School. I have also considered that the accused has remained in custody from the time the plea was taken on 30th September 2013 to date a period of two years and five months. The penalty for the offence of being an accessory after the fact to murder is found under section 222 of the Penal Code. This is the section creating the offence as well and is worded in the following terms:

Any person who becomes an accessory after the fact to murder is guilty of a felony and is liable to imprisonment for life.

I have taken into account the circumstances of the offence and the manner in which the accused handled the situation. It is my belief that the accused has learned that what he did in not excusable. Having considered the time spent in custody pending the conclusion of this case I do hereby sentence the accused to five (5) years jail term. The two years and five months spent in custody while awaiting determination of this case shall be subtracted from five (5) years and the accused shall serve the remainder of the sentence. For avoidance of doubt the accused is sentenced to serve a jail term of two years and seven months.

Orders shall issue accordingly.

Dated, signed and delivered in open court this 1st day of March 2016.

S. N. MUTUKU

JUDGE