



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 12 OF 2014**

**LESIIT, J**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**BYRON ROBERT OTIENO.....ACCUSED**

**RULING ON SENTENCE**

1. The accused has been convicted of murder contrary to **Section 203** of the **Penal Code**. The sentence for the offence of murder is provided under **Section 204** of the **Penal Code** which provides:

***“204. Any person convicted of murder shall be sentenced to death.”***

2. The prosecution led by Mr. Konga, learned Prosecution counsel, urged the court to treat the accused as a first offender as they did not have any previous records on the accused. I am therefore treating the accused as a first offender.
3. Mr. Mutitu counsel for the accused made a passionate plea to the court for leniency. Counsel urged that the accused was only 21 years old and the sole bread winner of his young family comprised of a wife and a young child. Counsel urged that the accused also provided for his lame father and his family.
4. Mr. Mutitu submitted that the accused is a staunch catholic. Counsel urged that the accused was sorry for the offence and pleaded for leniency to give him a second chance to get rehabilitated and live an upright life.
5. I have considered the mitigation ably given by the counsel for accused and especially the fact that the accused is a young family man and the sole bread winner to his and his father’s family.
6. The accused was arraigned in court with this offence on 23<sup>rd</sup> January 2014. I have considered that he has been in custody for one year five months during the pendency of his trial.
7. The deceased was an only child of his mother, PW3, and was equally a young man.
8. As demonstrated in the evidence adduced before the court as set out on the proceedings and the judgment there was controversy as to what the motive of the attack was and as to who had the knife, the murder weapon. This court accepted the prosecution evidence that it was the accused who had the knife in the first place. I also found that he was the attacker and that he stabbed the deceased once in the chest, the most delicate part of the body. Indeed so serious was the injury sustained that the deceased was dead within a short time. By the time he was carried to the nearby Health Centre, the deceased was already dead.
9. I have borne all these factors in mind before passing sentence. I have also considered **Section 204** of the **Penal Code** which shows clearly that the sentence for murder is a mandatory sentence for which the court has no discretion.
10. Having considered all these factors and the law, I sentence the accused to death as by law provided.
11. The accused has a right to appeal against both the conviction and the sentence.

**Dated at Nairobi this 9<sup>th</sup> day of June, 2015.**

**LESIIT, J**

**JUDGE**