



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 60 OF 2011**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**GEORGE NJOROGE NDUNG’U.....ACCUSED**

**SENTENCE**

George Njoroge Ndungu, the convict, was tried and found guilty for the murder of Michael Kaberu Ndung’u. In mitigation before sentence, his counsel told the court that the convict is 48 years old and was operating a motor cycle commonly referred to as *boda boda*. Counsel said that the accused is the sole bread winner for his elderly parents and three children and that he suffers from stomach ulcers. Counsel said that the convict is remorseful for the death of his brother and that he has been in custody since 2011. Counsel asked the court to exercise leniency in sentencing.

The law provides only one type of penalty for murder. Under section 204 of the Penal Code which is the penalty section, it is provided that:

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

In the case of **Joseph Njuguna Mwaura & 2 others v Republic [2013] eKLR**, among other cases, the Court of Appeal held that death penalty in Kenya is sanctioned by the Constitution. This remains the law in Kenya until it is changed. This being the situation, this court wonders what purpose the mitigation of any convicted person serves. I have however considered the mitigation by the convict in this case. As a judge of this court who has taken the oath of office to uphold the constitution without fear or favour I find that I have no discretion in the matter than to impose the penalty allowed by the law. I therefore sentence to the accused to death as provided under section 204 of the Penal Code. He shall suffer death as authorized by the law. Orders shall issue accordingly.

**Dated, signed and delivered this 3<sup>rd</sup> December 2015**

**S. N. MUTUKU**

**JUDGE**

**In the presence of:**

Ms Magoma for the prosecution

Mr. Muchemi, defence counsel

Mr. George Njoroge Ndung’u, accused

Mr. Daniel Ngumbi, court clerk