

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE NO. 7 OF 2009

REPUBLIC.....PROSECUTOR

VERSUS

WYCLIFFE KIPKORIR BETT.....ACCUSED

RULING ON SENTENCE

The accused was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code (*Cap. 63, Laws of Kenya*). On the evidence I found the accused guilty and convicted him of the offence of murder contrary to Section 203 of the Penal Code aforesaid, and called for mitigation in terms of Section 329 of the Penal Code before sentence.

In his submissions made on 12.02.2014, Mr. Orege Counsel for the accused submitted that the accused was remorseful for the loss of his brother, and that it was a great loss to himself as well. The accused was arrested on 16.09.2009 and has been in custody for slightly over 5 years. He is now thirty-two years of age. He was married to a house wife with one child born in 2004. Since his incarceration the wife has taken off with the child. Counsel submitted that the accused has learnt his lesson and has changed his attitude to life. Counsel asked for leniency.

The prosecution submitted that the accused had no previous record and that he was a first offender.

I have considered the submissions of both counsel for the accused, and the prosecution. The punishment for the offence of murder is death as prescribed under Section 204 of the Penal Code. The accused has been in custody for five years and now three months. He says he has learnt his lesson and has a different look to life.

Though Section 204 prescribes the death penalty, and Article 26(3) of the Constitution appears to support the death penalty as prescribed in the Penal Code, the same Constitution enjoins the court to give an interpretation that give effect to the rights under the Constitution, that is what Article 24(2)(b) & (c) of the Constitution of Kenya 2010 says. Though the limitations under the Constitution had equal force to the rights, the core right is to life, and not the punishment of death. Accused took away one life. The State should give effect to the right to life as a preferred interpretation to the Constitution.

Taking the above view and taking into account that the accused has been in custody for the last five years and nearly four months, I sentence the accused to twenty-five years imprisonment to run from the date of his detention on 16.01.2009.

It is so ordered.

Dated, signed and delivered at Nakuru this 16th day of May 2014

M. J. ANYARA EMUKULE

JUDGE