

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE NO. 50 OF 2008

REPUBLIC.....PROSECUTOR

VERSUS

DAVID SILALE EKENO.....1ST ACCUSED

FRANCIS OYIE LOMONING.....2ND ACCUSED

RULING

The accused herein were on 13th June 2014 convicted of the offence of murder contrary to Section 203 of the Penal Code (*Cap. 63, Laws of Kenya*). I called upon counsel to submit in terms of Section 329 of the Criminal Procedure Code (*Cap. 75, Laws of Kenya*), on the question of sentence.

Counsel submitted to the court that the accused were remorseful, and that both of them were drunk, to the point of being temporarily insane at the time when they committed the offence. The Prosecuting Counsel on his part submitted that there was no record on any of the accused; but submitted that they should be sentenced in terms of Section 204 of the Penal Code.

Section 204 provides that any person found guilty and convicted of the offence of murder shall be sentenced to death. However Article 26 of the Constitution of Kenya 2010, entrenches the right to life under the Bill of Rights Article 23 of the Constitution enjoins the courts to enforce the Bill of Rights by giving such an interpretation that enhances rather than detracts from the right. That one life was senselessly lost is bad enough. I would therefore uphold the right to life for both accused.

The accused however caused the deceased to lose his life. They claim that they were both drunk to the point of being insane. This defence was raised at trial, and I considered it in my judgment and rejected it for the reasons stated in the judgment. The murder of the deceased was a senseless act of bravado by the accused, and they deserve an appropriate and deterrent sentence.

I sentence each of the accused to thirty years imprisonment to run from the date of their arrest and detention.

It is so ordered.

Dated, signed and delivered at Nakuru this 10th day of October, 2014

M. J. ANYARA EMUKULE

JUDGE