

REPUBLIC OF KENYA

High Court at Eldoret

Criminal Case 27 of 2007

REPUBLIC PROSECUTOR

VERSUS

CHARLES KIPTUM TUWEI ACCUSED

RULING ON SENTENCE

In mitigation, Counsel for the accused submitted that the accused is a loving father of one child and is married to one wife. That he acted at impulse of range after a quarrel between himself, his son and his father. That he has been in custody since the year 2006. That during the period he was in custody, he has learnt his lessons and is remorseful. That he has changed his faith from Christianity to Islam as a sign of change in character. That the court should give him a non-custodial sentence in the circumstances.

But given the evidence on record, it is clear that the accused had pre-meditated the death of the deceased. He acted completely opposite of what is expected of a loving father. The trust bestowed on him as a father and protector of his family is all eroded. The innocent life of the deceased was taken away in a brutal manner that cannot be justified. It is in view of this I find that a deterrent sentence is called for.

However, as observed in the case of **GODFREY NGOTHO MUTISO -V- R. MOMBASA CRIMINAL APPEAL NO. 17 OF 2008**, death as prescribed by law is no longer a mandatory sentence depending on circumstances of each case. I am of the same view, given that, once handed a death sentence, the offender is denied the chance to reform. And I find this case, a suitable example in which the accused should be accorded a second chance to reform.

Taking into account all these factors, I sentence the accused to serve thirty (30) years imprisonment. The period spent in custody shall be taken into account in computing the sentence. Right of appeal fourteen (14) days.

It is so ordered.

DATED and DELIVERED at ELDORET this 11th day of April, 2013.

G. W. NGENYE – MACHARIA

JUDGE

Mr. Misoi Advocate for the Accused

Mr. Munene for the State