



REPUBLIC OF KENYA

High Court at Eldoret

Criminal Case 32 of 2007

REPUBLIC.....PROSECUTOR
VERSUS

PATRICK LUMONJE OBOTE.....ACCUSED

SENTENCE

The Accused has been found guilty for the offence of murder and has been convicted.

The only remaining issue is that of sentencing.

Section 204 of the Penal Code provides for the death penalty for any person convicted of murder. The Section reads as follows;

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

Counsel for the Accused submitted in mitigation that this court is vested with discretion to pass any other sentence apart from the mandatory sentence.

Counsel urged the court to take into consideration the age of the Accused and the number of years spent in remand and urged the court to give the Accused a chance to reform. Counsel referred the court to the case of **GODFREY NGOTHO MUTISO CR. APP.NO. 17 OF 2008** in support of his submissions on mitigation.

The State in response submitted that even though the Accused was a 1st offender the court should impose the maximum sentence provided in law so that it may act as a deterrent to others.

After hearing the submissions of both Counsel and after having perused the case referred to by Counsel for the Accused **GODFREY NGOTHO MUTISO VS REPUBLIC (2010) eKLR**. This court is persuaded that the death penalty which is the only sentence provided for the offence of murder, goes against the letter and spirit of the Constitution.

This court holds the opinion that the death penalty is the ultimate denial of a human right and violates the fundamental right to life.

This court has perused the Court of Appeal decision at length and concurs that only a handful of inmates have been executed since independence and that our prisons in Kenya are inundated with a huge number of inmates on death row.

This court in handing out the death sentence to the Accused will only be adding to these swelling number of inmates and to the numbers who suffer the “**death row syndrome**”

The death penalty is also an archaic sentence in a changing, evolving and modern society.

For those reasons and taking into consideration the circumstances of this case and the mitigation made by Counsel that he be treated as a 1st offender and the time spent incarcerated in remand. This court is persuaded that the Accused does not merit the maximum sentence imposed by the law, which is death.

The Accused is hereby sentenced to serve a term fifteen (15) years.

It is so ordered.

Dated and delivered at Eldoret this 1st day of November 2012.

**A.MSHILA
JUDGE**

Coram: Before Hon. A.Mshila J
CC: Andrew

Counsel for the Accused: Mokuu holding brief for Chepkwony

Counsel for the State: Wainaina.

**A.MSHILA
JUDGE**