IN THE COURT OF APPEAL
AT NAKURU

(CORAM: MATIVO, GACHOKA & KORIR,

JJ.A.) CRIMINAL APPEAL NO. 32 OF 2019

BETWEEN

DENNIS KIPKIRUI BETT.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(An appeal from the judgment of the High Court at Kericho (Mumbi Ngugi, J.) delivered on 21st February 2019

in

HCCR No. 35 of 2016)

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JUDGMENT OF THE COURT

1. The appellant, Dennis Kipkurui Bett, was charged and convicted for the offence of murder contrary to **section 203** as read with **section 204** of the **Penal Code**. The particulars of the offence were that on the 31st October 2016 at Manyoro village, Kericho County, the appellant murdered Victor Kiplangat Tanui. Upon conviction, the appellant was sentenced to life imprisonment.

2. The appellant is now before us, challenging the sentence only. In his memorandum of appeal, he contends that the sentence imposed on him was manifestly harsh and excessive.

3. When this matter came up for hearing, learned counsel Ms. Daye appeared for the appellant, while learned Senior Assistant

Director of Public Prosecution (SADPP) Mr. Omutelema appeared for the respondent. Counsel sought to rely on their respective written submissions, which were already on record and are highlighted below.

4. In the submissions dated 5th July 2024, learned counsel Ms. Daye urged that the sentence passed by the trial court was manifestly harsh and excessive. Counsel contended that the trial court did not consider the mitigation by the appellant. She urged us to take into account that the appellant was a first offender, extremely remorseful, and had been in custody prior to his conviction. Ms. Daye relied on **Muruatetu & Another vs. Republic; Katiba Institute & 5 Others (Amicus Curiae) [2021] KESC 31 (KLR)** to point out the factors for consideration in sentencing rehearing, **section 379(1)(b)** of the **Criminal Procedure Code** to appreciate this Court's jurisdiction on appeal against sentence, and **S vs. Malgas 2001(1) SACR 469 (SCA)** to urge that even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court.

5. On his part, learned counsel Mr. Omutelema maintained that the sentence was proper and urged us not to interfere. Counsel submitted that the sentence imposed upon the appellant was informed by the aggravating circumstances of the case. Buttressing these submissions, counsel referred to **John Muendo Musau vs. Republic [2013] KECA 266 (KLR)** to urge that sentencing was an exercise of discretion by the

trial

court and that there were no sufficient reasons for this Court to interfere with the sentence.

6. We have addressed our minds to the record and the submissions by counsel. What determines this appeal is the single question as to whether a case has been made by the appellant to warrant our interference with the trial court's exercise of the sentencing discretion.

7. As correctly submitted by both sides, sentencing is at the discretion of the trial court. An appellate court will only interfere with that discretion where it is shown that the trial court acted on a wrong principle, ignored material facts, or that the sentence is so manifestly excessive or inadequate as to be an injustice. This position has been restated by the Court in several decisions, including **John Muendo Musau vs. Republic** (supra). In **Bernard Kimani Gacheru vs. Republic [2002] KECA 94 (KLR),** it was held that:

> ***"It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the***

discretion of the trial court on sentence unless, any one of the matters already stated is shown to exist."

8. In **Republic vs. Ayako [2025] KESC 20 (KLR)**, which we appreciate was an appeal in respect of a sentence imposed under the Sexual Offences Act, the Supreme Court overturned the decision of this Court (differently constituted) that had reduced a life sentence to 30 years and reinstated the life imprisonment imposed by the trial court and confirmed by the first appellate court, holding that the life sentence remains constitutionally and legally valid under the Kenyan law.

9. Having said the foregoing, we now turn to the circumstances of the appeal before us. It is recorded that the appellant was a first offender. He also expressed remorse before the trial court. On the flipside, we note that the appellant ended the deceased's life unprovoked. He turned on the appellant, who, in good faith, offered to transport him. It also emerged that the appellant injured another person. According to the presentencing report, the appellant's social character was questionable. In light of the foregoing, and having read the trial court's ruling on sentence, we find no basis for agreeing with the appellant that the trial court misapprehended the law or overlooked any relevant material.

10. As a result, we find that the appellant has not persuaded us to warrant our interference with the sentence handed down by the trial court. We also find that life sentence is legal and is within the scope of the maximum death sentence provided for the

offence of

murder under **section 204** of the **Penal Code**. The end result is that the appellant's appeal is dismissed.

Dated and delivered at Nakuru this 10th day of April 2026.

J. MATIVO

.....
JUDGE OF APPEAL

M. GACHOKA C.Arb, FCIArb

.....
JUDGE OF APPEAL

W. KORIR

.....
JUDGE OF APPEAL

I certify that this is a True copy of the original
Signed
DEPUTY REGISTRAR