



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL CASE NUMBER 33 OF 2018**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**HILLARY MAURICE KIPRONO alias JUSTIN KIBOR.....ACCUSED**

**SENTENCE – RULING**

**Hillary Maurice Kiprono** was charged with **Murder** of his estranged wife, Joyce Wangari Gicheha. After a full trial he was found guilty and convicted for **Murder Contrary to Section 203 as read with 204 of the Penal Code**. He is liable to be sentenced to death.

I heard his mitigation which he made personally though he was represented by Mr. Opar. He asked the court to consider his age, and the fact that he was the sole bread winner for his family, that he has an aged, widowed mother, he has four (4) children, one born out of wedlock, he urged the court to consider the welfare of the children who were now in an orphanage. He beseeched the court to consider that being their sole parent he had the duty and responsibility to care for them and his children would be better off with him than in the hands of well wishers. It was his desire to be re-united with his children. That he was an advocate of involved parenting.

That he had been remorseful throughout. That he had been in custody all along because he has denied bond. That during his stay in remand custody had given his life to Jesus, serve as a pastor for the Adventist Church within Remand Prison. He submitted that; *“every life we touch is a seed, and we harvest what we plant.”* That a second chance for him would be a seed.

He went on to ask the court to consider that the deceased was his real wife, and that he too loves women, being the child of one, that he had lost the mother of his children.

He submitted further that the matter was technical and that the question and answers defence his advocate had adopted had denied him the opportunity to tell his side of the story when he launched an attack against the key prosecution witness. I warned him that could not be mitigation.

He told the court that his marriage was broken by post election violence of 2007 being between a Kalenjin and Kikuyu as the family of the deceased was affected and the two had to separate in 2010. That he had reformed both physically and morally. He sought a non-custodial sentence in the spirit of fairness.

Submitting on the pre-sentence report, he told the court that the report was fueled by the family of the deceased who did not want to see him reunited with the children yet he was their biological father. He concluded by citing Collosians 2:13. Mr. Opar added that his client had been in custody for a while, that he was remorseful and deserved a non-custodial sentence.

I have carefully considered the pre-sentence report. It is noted that the secondary victims of the offence, the children of the deceased and the accused person were not interviewed. The reason given by the Probation Officer is that, the relatives of the deceased refused access to the children saying that it would be too traumatizing. From the report by the Probation Officer, the children are Sharon Nduta, now at Meru Polytechnic College, Joy Chepkoech at Kipsasian Secondary School in Form two (2) and Edwin Kiprotich, in class six (6).

These children live at Phyllis Wambui Children Home. Edwin testified in court, and so did Joy. Clearly they are not strangers to this matter. They had the right to be heard in this issue as to whatever sentence the court will mete to the accused, they will be affected directly as he is their biological father.

The Probation Officer has the obligation to explain this to the relatives and to seek to access the children, so as to get their views. Hence, it was directed that the Probation Officer to utilize the period of school holidays to obtain the Victim Impact Assessment Report from the children and avail it to court on or before the 5<sup>th</sup> January 2022.

I asked for a Victim Impact Statement on the accused. Two of them were interviewed. They live in a Children Charitable Institution (CCI) run by a relative of their mother, one is in form II, the other is in Class six (6). According to the report, the one in Form two (2) had been undergoing counselling at the behest of the school principal, however at the interview she told the Probation Officer she was still angry with her father, that she hated him, and could even kill him. The young man was reported to bear similar feelings to the father.

The Probation Officer reported that the family of the victim had not initiated recommendation due to fear, but if any was initiated they would be willing to participate.

I have carefully considered all the mitigation and the reports.

First, it is evident that the children victims herein are children in need of care and protection vide **Section 119 (1) (c) of the Children Act**, as one parent is deceased, and one is in prison. The County Co-ordinator Children Service Nakuru is directed to open a **Protection and Care (P & C)** file before the **Children Court Nakuru** to file a Children Officer's Report with recommendations on how best to deal with the child, as there is no evidence that they were formerly committed to CCI, or that they are receiving the appropriate psychological support.

That done, the issue then is what is the appropriate sentence for the accused person herein, while he expresses remorse, he continues to deny that he committed the offence.

The case of **Francis Karioko Muruatetu** declared the mandatory sentence of death, unconstitutional. Taking into consideration the guidelines set out by the Supreme Court, and the circumstances of the offence, it is evident that the accused person committed a heinous attack upon the mother of his children in broad day light, cutting her with a panga.

I found that the sentence of thirty (30) years imprisonment with effect from the date of his remand appropriate in the circumstances of the case.

Accused is therefore sentenced to thirty (30) years imprisonment from the date of 1<sup>st</sup> remand i.e. 12<sup>th</sup> July 2018.

Right of Appeal – 14 days.

**Dated, Delivered and Signed virtually this 31<sup>st</sup> day of January, 2022.**

**Mumbua T. Matheka**

**Judge**

**In the presence of:-**

Court Assistant Edna

Mr. Opar for accused

Ms Murunga for state

Accused present



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