



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO. 70 OF 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**WILSON MWANGI GITHINJI.....1<sup>ST</sup> ACCUSED**

**SIMON NDAMBARI GATUMU.....2<sup>ND</sup> ACCUSED**

**RULING ON SENTENCE**

Wilson Mwangi Githinji has been tried, found guilty and convicted for the offence of murder of Grace Njeri Leposo contrary to section 203 as read with section 204 of the Penal Code in a judgment delivered on 25<sup>th</sup> January 2018. Grace Njeri Leposo was murdered in her house on 11<sup>th</sup> June 2013 and her body cut into pieces. Wilson Mwangi Githinji was jointly charged with Simon Ndambari Gatumu but the court acquitted Simon for lack of evidence. The prosecution informed the court after the judgment was delivered that there were no previous criminal records against the accused. This court has therefore treated him as a first offender.

In mitigation before sentencing, Mrs. Nyamongo counsel for the accused submitted that the accused was just 19 years old when the offence was committed and from 24<sup>th</sup> June 2013 when he was arrested to the time he was found guilty and convicted for murder he had been in custody for about four (4) years. Counsel urged the court to take this into account in sentencing the accused. She further submitted that there has been no negative report against the accused; that he has rehabilitated well while in remand; that the accused is the last born in his family and the mother died while in custody after her arrest in connection with this offence; that the accused sympathizes with the manner the deceased met her death and that he still denies causing her death because he had no reason to kill her. Mrs. Nyamongo asked this court to exercise discretion and give the accused another chance in life.

I have considered the mitigation of the accused. He still denies having taken part in killing the deceased. This court in its reasoned judgment found him guilty of this crime. The accused is not remorseful because he maintains that he did not kill the deceased. In sentencing the accused this court has taken into account his mitigation, the circumstances surrounding this offence and the fact that the accused still maintains that he is innocent. The penalty for murder is death. However following the decision of the Supreme Court in **Petition No. 15 of 2015 Francis Karioko Muruatetu & another v. Republic & Katiba Institute with 5 others** as Amicii Curaii, this court now has discretion to give the accused any other sentence other than death. I am alive to the fact that no sentence no matter how stiff can compensate for the loss of life of the deceased. I therefore consider a sentence of 15 years as fair in the circumstances. Consequently, I hereby sentence Wilson Mwangi Githinji to fifteen (15) years imprisonment. This sentence has been determined after taking into account that Wilson Mwangi Githinji has stayed in prison custody during the pendency of this trial. Right of appeal within 14 days from today has been explained to the accused. Orders shall issue accordingly.

**Delivered, dated and signed this 7<sup>th</sup> day of March 2018.**

**S. N. Mutuku**

**Judge**