



**Republic v Musee (Criminal Case 63 of 2016)
[2024] KEHC 9452 (KLR) (Crim) (31 July 2024) (Sentence)**

Neutral citation: [2024] KEHC 9452 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE 63 OF 2016**

**LN MUTENDE, J
JULY 31, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOHN KIOKO MUSEE ACCUSED

SENTENCE

1. John Kioko Musee, the accused/ offender was convicted for murder contrary to Section 203 of the *Penal Code*. Pursuant to the provisions of Section 329 of the *Criminal Procedure Code*, it is submitted that the accused was arrested two (2) months after the incident occurred and during that time he continued to work at the Butchery, his place of employment.
2. That he has health issues including serious dental ailment and the medicine given to him in prison aggravates the ulcers. He continued to deny having committed the offence but sought to be released on probation or be discharged under Section 35(1) of the *Penal code* having spent nine (9) years in remand custody.
3. A presentence report was filed by the Probation Department following a social inquiry that was conducted. It was found that the accused, aged 38 years was raised by his maternal grandmother, his mother, a single mother passed on when he was of tender age. As a result of his mother’s demise, he dropped out of school while in standard 4 due to lack of school fees.
4. The offender-maintained innocence arguing that he was implicated by his acquaintance relatives. He did not show any remorse towards the offence.



5. The secondary victims comprising of the deceased wife of nine years with whom they had two (2) children, his siblings and parents called for a maximum sentence. It was urged that the deceased children are struggling for lack of school fees.
6. The sentiments of the community were obtained through the local administration from both Mwala and Kangundo. The Mwala Community vouched for his good character and social standing in the community. They were of the opinion that the period spent in custody was sufficient punishment and called for leniency from the court.
7. The community in Kangudo however supported the deceased family and called for a stringent sentence. They stated that the death of the deceased affected the family such that his father developed complications and eventually died. Prior to his death he advised his family not to attempt engaging in any reconciliation or restitution process with the family of the offender.
8. It was noted by the Probation Officer that the offender was not remorseful and his family believes in his innocence.
9. Section 204 of the *Penal Code* provides that:

Any person convicted of murder shall be sentenced to death.
10. The sentence meted out must reflect the blameworthiness of the offence and also circumstances in which the offence was committed.
11. In *Dahir Hussein -Vs- Republic, Criminal Appeal No. 1 of 2015; (2015) eKLR*, the Court held that the objectives of sentencing include:

“Deterrence, rehabilitation, accountability for one’s actions, society protection, retribution and denouncing the conduct by the offender on the harm done to the victim.”
12. When sentencing an offender, the court must take into consideration objectives of sentencing. An accused person’s liberty is taken away where it is appropriate. It is evident that the secondary victims of the crime have been injured emotionally which may call for a retributive sentence.
13. Looking at the circumstances in which the offence was committed, there may be need for protection of the public as the accused may not be trusted to behave appropriately having failed to control his actions sufficiently which would call for incapacitation.
14. The submissions put forth by the accused/offender and information established by the Probation Officer clearly show lack of remorse on the part of the accused. He has not demonstrated if he will not commit any other offence that will result into punishment. This therefore calls for a deterrent sentence which may help rehabilitate him while incarcerated.
15. The accused was a first offender, though not remorseful, he had been drinking with the deceased his acquittance, they left together the wine and spirit shop. Subsequently the deceased was found dead; circumstances I have considered.
16. The upshot of the above is that the accused is sentenced to serve fifteen (15) years imprisonment.
17. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 31ST DAY OF JULY, 2024.

L. N. MUTENDE



JUDGE

