



**Republic v Ndegwa (Criminal Case 15 of 2018)
[2024] KEHC 16657 (KLR) (25 September 2024) (Sentence)**

Neutral citation: [2024] KEHC 16657 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL CASE 15 OF 2018
GL NZIOKA, J
SEPTEMBER 25, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

MOSES MORUCHO NDEGWA ACCUSED

SENTENCE

1. The sentence herein is delivered pursuant to the judgment rendered in this matter on 9th February, 2024, wherein the accused was found guilty and convicted of the offence of murder contrary to contrary to section 203 as read with section 204 of the *Penal Code* (Cap 63) Laws of Kenya.
2. Sentencing is central task of administration of justice by a court of law. In that regard clause 4.6.1 of the *Sentencing Guidelines* (2023) provide *inter alia* that; the sentencing process forms part of the trial and is therefore subject to the fair hearing constitutional guarantees.
3. In that regard, the Supreme Court of India in the case of, *Antony Pereira v State of Maharashtra* (2 AIR 2012 SC 3802) held that stated that

“70. Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done.”

4. Similarly, the Supreme Court of Kenya in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR stated that: -

“[41] It is evident that the trial process does not stop at convicting the accused. There is no doubt in our minds that sentencing is a crucial component of a trial. It is



during sentencing that the court hears submissions that impact on sentencing. This necessarily means that the principle of fair trial must be accorded to the sentencing stage too."

5. In addition, the Supreme Court gave guidelines to the Courts to consider in re-sentencing offenders convicted of the offence of murder as follows: -

"[71] As a consequence of this decision, paragraph 6.4-6.7 of the guidelines are no longer applicable. To avoid a lacuna, the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

- a. age of the offender;
- b. being a first offender;
- c. whether the offender pleaded guilty;
- d. character and record of the offender;
- e. commission of the offence in response to gender-based violence;
- f. remorsefulness of the offender;
- g. the possibility of reform and social re-adaptation of the offender;
- h. any other factor that the Court considers relevant.

[72] We wish to make it very clear that these guidelines in no way replace judicial discretion. They are advisory and not mandatory. They are geared to promoting consistency and transparency in sentencing hearings. They are also aimed at promoting public understanding of the sentencing process."

6. In compliance with the afore, this court ordered for a pre-sentence report and the accused's record of previous conviction (if any) or any indication of being a first offender.
7. The prosecution availed records from the Identification Bureau indicating that, the accused is not first offender as he was previously charged in Chief Magistrate's court at Naivasha criminal case with the offence of stealing by agent contrary to section 283 of the *Penal Code* and was convicted on 23rd September 2009 and sentenced to pay a fine of Kshs, 5,000 and in default to serve imprisonment for a term of six (6) months.
8. The probation department filed a pre-sentence report dated 24th June 2024 that indicates the accused's father passed away in the year 2020 while the mother is elder and ailing. The accused is the 5th born out of 14 siblings though three of the siblings are deceased.
9. That the deceased has attained academic qualification to college level where he took a course in sales, marketing and management stage one certificate between the year 1996 and 1997. That he engaged in casual farming jobs between the year 2000 and 2004 before venturing into farming and rearing cattle on a piece of land he inherited from his father. He also built a house on the said land where he was leaving until his arrest.
10. That the accused married his first wife Virginia Njoki in the year 2000 and they were blessed with three (3) children although one died. That the first born is 22 years old currently studying at Egerton University while the second born is 15 years old in form 1. However, the accused and his wife separated



in the year 2008 with the wife relocating their children back to her parents' home in Maragishu Naivasha.

11. That in the year 2010 the accused entered into a relationship with the deceased who had two children from previous relationships. According to the deceased's family, the accused and the deceased had normal disagreements that would be resolved. However, an uncle to the deceased stated that, at one time the deceased reported that the accused had assaulted her which was later resolved and they continued with their relationship.
12. On the offence, the report indicates, the accused had gone to confront the deceased after receiving letters from authorities warning him against violence towards the deceased. Further, there were claims of infidelity that the accused had information that the deceased wanted to reconcile with her first-born child's father.
13. That the accused is remorseful and as he did not intend to end the deceased's life and that he loved the deceased and sold some of his cows to educate her children and even built a house for her son. That he prays for leniency.
14. The report further indicates that, the accused family is tight-knit and they have a close relationship with each other and have been visiting the accused in custody. That they were shocked by the offence and empathize with the deceased's family. The family prayed that the court render sentence with mercy.
15. The family of the deceased is reported to have indicated that, the loss of the deceased affected them psychologically and that they are still grieving. The deceased's children stated that, their mother was their support and since her demise they have experienced financial constraints. That, the deceased daughter had to drop out of college where she was pursuing a course in hair dressing. The family prays that justice is served.
16. The community members are indicated to have been left shocked by the offence. That the accused was an avid football fan and a coach with Nyakio football team and was well known and had no history of violence.
17. The Probation Officer Njeri E. Kahumba stated that the accused requires intervention in anger management and resolving conflicts in relationships, which interventions will add value to his rehabilitation which will in turn deter re-offending. She recommends the court to deal with the accused as it deemed fit.
18. I have also considered the mitigation tendered by the accused to the effect that he is remorseful, the death was accidental as he had no intention to kill the deceased and was due to a disagreement. Further the court should consider the circumstances of the offence and gives him a non-custodial sentence. Furthermore, he has been in custody for almost a year and is a first offender.
19. However, it suffices to note that the accused and the deceased stayed together as husband and wife for long at least eight (8) years albeit that the relationship was turbulent undergoing reconciliation on several occasions that did not resolve differences.
20. Even if there is truth that the deceased was unlawful in marriage or guilty of infidelity, the question is; did she deserve to be killed. Ironically, even the accused had separated from his first wife. He admits he acted in the heat of anger and as of now there is no evidence the anger has been managed to release him back to the society.
21. Further still although he states that, he is remorseful the murder of the deceased is irreversible. Furthermore, the allegation of going to educate children does not arise as they are of age and unlikely



- that the deceased's children will relate with him after the murder. The other children from his first marriage have since been with their mother and in any case, they have attained the age of majority.
22. The age of the accused and the views of his family and the community to accord him a non-custodial sentence are considered. However, those sentiments must be balanced against those of the victim's family members.
 23. The deceased had a legitimate expectation of life. She had a human right to life. It was cut short by the accused for no apparent reason. Evidence has it that the accused had been warned severally over threatening the deceased. He actually killed her when served with a warning letter from the chief. His remarks after he was served with the letter indicates premediated desire to kill.
 24. In a case of this kind, the voice of the victim is silent. The version of events as they occurred remain one sided unless there is a witness. Further still, the deceased deserves justice from her grave. She died in a very painful and cruel way. A life was lost permanently. It is evidence that the victim's family are bitter and are grieving and need counselling and social support. They are opposed to a non-custodial sentence and are asking for a severe punishment.
 25. I therefore sentence the accused fifteen (15) years imprisonment to run from 25th July 2018 when he was first arraigned in court. It is so ordered.
 26. Right of appeal explained within fourteen (14) days.

DATED, DELIVERED AND SIGNED ON THIS 25TH DAY OF SEPTEMBER 2024.

GRACE L. NZIOKA

JUDGE

In the presence of:-

Mr. Ndiema for the State

Mr. Waigwa Ngungiri for the accused

The accused present, virtually

Mr. Komen, Court Assistant

