



**Republic v Wanjiku & another (Criminal Case 4 of 2020)
[2024] KEHC 13315 (KLR) (31 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13315 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 4 OF 2020
RM MWONGO, J
OCTOBER 31, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

DAVID MACHARIA WANJIKU 1ST ACCUSED

STEPHEN KARIUKI JAMES 2ND ACCUSED

JUDGMENT

Background

1. This judgment relates only to the 1st Accused. He was charged with murder contrary to section 203 as read with section 204 of the Penal Code jointly with the 2nd Accused. The particulars of the offence are that the 1st Accused together with the 2nd Accused on 21st day of January, 2020, at Mutithi village in Makutano location within Mwea West sub-county within Kirinyaga county, unlawfully murdered Fredrick Wachira Karani.
2. The accused took plea on 24th February, 2020 and pleaded not guilty to the murder charge. After 5 months, on 23rd July, 2020, he was released on a bond of Kshs. 500,000/=.
3. The 1st accused took a fresh plea on 25th March, 2022. The charge and the particulars of the offence were read to him. He pleaded guilty to the charge of murder.
4. In terms of section 203 as read with section 204 of the Penal Code the accused, upon being convicted, is subject to death sentence.

Brief facts

5. The accused and the victim had known each other for 4 years. The accused had been living at the victim's homestead where he worked as a farm hand. On the fateful night, the victim is said to have



been under the influence of alcohol when the two disagreed over sharing some few kilograms of rice they had harvested. They fought causing fatal injuries that led to the death of the victim at his home. The accused never escaped after the incident but presented himself to the Wang'uru Police Station.

Analysis and Determination

6. The issue at hand is what sentence should be meted on the accused who was convicted on his own plea of guilty for murder.
7. Section 203 and 204 of the Penal Code under which the accused is charged provides for the offence of murder and the punishment for it in the following terms:
 - “ 203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
 204. Any person who is convicted of murder shall be sentenced to death.”
8. The circumstances of the offence are set out in the Summary of Facts presented by the State as follows: The Accused David Macharia Wanjiku left home at about 0800 hours and proceeded for his casual jobs. At about 1700 hrs he returned home and found his house broken into with his mobile phone and rice about 20 kg having been stolen. He suspected the deceased Fredrick Wachira Karani to be the person who stole his items as he was fond of stealing petty items.
9. Fredrick Wachira Karani (the deceased) arrived home while drunk and when he questioned him about his items, he denied knowledge of the same. Enraged by the answer, the accused removed his belt and started beating Fredrick mercilessly and, in the process, the deceased confessed of having taken the items and that he gave them to his girlfriend Annastacia Wanjiku.
10. At about 1930 hrs Annastacia Wanjiku arrived home asking if the accused had seen the deceased. The accused informed her that he was in the house nursing the injuries he inflicted on him after he stole his phone and 20 kg of rice. Annastacia Wanjiku moved to the house and confirmed the deceased was indeed injured but talking. She inquired from him why he had stolen the items but he denied doing so. Annastacia pleaded with the accused not to beat the deceased and instead to wait until he was sober. They then left him on the bed only for him to be discovered dead on 22nd January 2020.
11. The Post Mortem Report indicates that the cause of death was severe head injury following assault with a blunt object.
12. Under the Judiciary sentencing Policy guidelines, the objectives of sentencing are:
 1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
 2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
 4. Restorative Justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
 5. Community Protection: to protect the community by incapacitating the offender.



6. Denunciation: To communicate the community's condemnation of the criminal conduct.
13. In the case of Francis Karioko Muruatetu & Another v Republic (2017) eKLR the Supreme Court outlawed the mandatory nature of the death sentence, but did not outlaw the death sentence itself. As a result, the mitigation of murder convicts is taken into account by the court in exercising its discretion in sentencing.

Mitigation

14. In the Muruatetu case (Supra), the Supreme Court made several observations. Some paragraphs of that judgement are very helpful to the lower Courts when it comes to sentencing. At paragraph 48 the Supreme Court states as follows:
 - “(48) Section 204 of the Penal Code deprives the Court of the use of judicial discretion in a matter of life and death. Such law can only be regarded as harsh, unjust and unfair. The mandatory nature deprives the Courts of their legitimate jurisdiction to exercise discretion not to impose the death sentence in appropriate cases. Where a court listens to mitigating circumstances but has, nonetheless, to impose a set sentence, the sentence imposed fails to conform to the tenets of fair trial that accrue to accused persons under Articles 25 of the Constitution; an absolute right.”
15. The 1st accused in his mitigation stated that he is a 1st offender and previously co-existed well with the community. He is remorseful for the incident and has been rehabilitated. He prays for time spent in custody to be considered during sentencing.
16. The prosecution submitted that the accused deserved a custodial sentence since he pleaded guilty for murder. Further, the victim's life was cut short at 39 years of age.
17. The Prisons Report dated 5th February, 2024 shows that the accused while in custody has attained life skills, he is a choir master and has been pursuing a diploma in theology. If given a second chance he will be useful to society.
18. The Probation Officer's Pre-Sentence Report dated 3rd October, 2022 is favourable and recommends a non-custodial sentence.
19. Thus, the 1st accused qualifies for a sentence other than the death sentence keeping in mind the gravity of his offence.
20. The court also notes that the period spent in custody should be considered in sentencing the accused. The 1st accused was arrested on 7th February, 2020 and has remained in custody for 4 years. In Republic v Isaac Wanjala Murumba [2021] eKLR it was stated:
 - “In accordance with section 333(2) of the Criminal Procedure Code, the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account.”
21. Having considered the aggravated nature of the offence and the effect of the same on the family and the community, this court considers that a custodial sentence is the appropriate sentence to mete.



22. In the following case the accused was sentenced to 28 years imprisonment for the murder of his 3-year-old son. In *Mwei v Republic (Criminal Petition 104 of 2020)* [2022] KEHC 13045 (KLR) (21 September 2022) (Judgment). The court stated:

“From the evidence on record, the Petitioner on 29/8/2007 arrived home in a state of intoxication and got into a physical altercation with the wife and in the midst of the fight the Petitioner killed their three-year-old son without any legal justification.

In the end, the death sentence is hereby set aside and the same is substituted with 28 years’ imprisonment. The said sentence shall run from the date of arrest.”

23. Taking all the foregoing matters into account, I hereby sentence the accused to fifteen (15) years imprisonment. Such sentence to take into account the four (4) years the accused has spent in custody.

24. Orders accordingly.

DELIVERED AT KERUGOYA THIS 31ST DAY OF OCTOBER 2024

.....

R. MWONGO

JUDGE

DELIVERED IN THE PRESENCE OF:

1. Accused 1: Present in Court
2. Accused 2: Present in Court
3. Otieno: holding brief for Makworo for Accused
4. Mamba for the State
5. Court Assistant, Rahab

