



**Republic v Mwaniki & 4 others (Murder Case 10 of 2023)
[2024] KEHC 13341 (KLR) (28 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13341 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
MURDER CASE 10 OF 2023
CM KARIUKI, J
OCTOBER 28, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

ISAAC MBURU MWANIKI 1ST ACCUSED

BETH WAITHERA MWANGI 2ND ACCUSED

DAVID NJENGA KAMAU 3RD ACCUSED

JOHN KARIUKI WANGUI 4TH ACCUSED

EDWARD GITHINJI MUCHWE 5TH ACCUSED

RULING

1. The Accused was charged with the murder of the victim here, along with four others.
2. He was convicted, and the matter comes for sentencing.
3. He is said to have no previous record; thus, the defense submits that he is a first offender who is young with a whole life ahead of him. He has been in custody for eleven (11) years, which the court should take into account while considering a suitable sentence.
4. He seeks leniency.
5. The court ordered a post-conviction report to be filed, but the probation office has not compiled it due to an unknown reason for the delay. Thus, the court decided to write the ruling on the sentence PCR report notwithstanding. The court has considered the SENTENCING POLICY GUIDELINES 2023; ON MURDER MATTERS, see 5.2.2. The harm caused by such an offense is immeasurable. The sentence is not a measure of the value placed on the life of the victim. Therefore, the assessment of aggravating and mitigating features relating to the offense focuses on blame. However, the victims'



families may wish to make a statement to the court about the impact of the offense. 5.2.3 In addition to the generic features contained in the Guided Approach to Sentencing (GATS), features particularly relevant to murder may include but are not limited to:

6. 5.2.4 Aggravating Factors in Murder Cases:
 7. A significant degree of planning or premeditation. ii. The mental or physical suffering inflicted upon the victim before death. Factors such as the type of weapon used, torture, or inhuman or degrading treatment prior to death will be relevant. iii. The use of coercion or threats to enable the offense to take place.
 8. IN THE REVISED SENTENCING POLICY GUIDELINES 67 iv. The vulnerability of the victim, e.g., due to age or disability. v. The fact that the victim was providing a public service or performing a public duty. vi. Multiple victims or multiple perpetrators. vii. Where the offense involved an abuse of trust. The relationship between the victim and the accused should be carefully considered. viii. The offense was motivated by, or there was demonstrated hostility to the victim based on their race, gender, sex, sexual orientation (or presumed sexual orientation), pregnancy, marital status (so-called ‘honor killings’, for example), health status (e.g., murder occurred because of the HIV status of the victim, or albinism), ethnicity, culture, dress, language, birth, or religious orientation (or presumed religious orientation). ix. A history of assaults, threats, or coercion upon the same victim. x. Absence of self-defense or provocation. xi. The offense involved deliberate drugging or stupefying of the victim. xii. Proven abduction or kidnapping of the victim before the murder was committed. xiii. Where a demand for ransom was made, signifying a financial motive. xiv. Concealing, destroying, or dismembering the body. xv. Where the murder was conducted in furtherance of a ritualistic practice such as witchcraft.
9. 5.2.5 Mitigating features relating to murder might include i. Lack of premeditation. ii. The offender had a mental disorder or mental disability, which lowered his degree of blame. iii. In the case of joint enterprise, the role the offender played may be lower than his co-accused. For example, in the resentencing of the Applicants in Francis Karioko Muruatetu & 6 others v Director of Public Prosecutions [2019] eKLR, the Judge categorized the offenders into four categories based on their guilt. The first category involved the architects of an offense, e.g., those who financed the killing; the second category involves offenders who ensnared the deceased into his death; the third category is the henchmen, those who carried out the brutal killing; and the fourth category involves offenders involved in the cover-up of the offense by attempting to silence witnesses. The Judge sentenced the third category with the highest term of imprisonment and graduated the term down for the other categories. iv. That the offender was provoked. v. That the offender acted to any extent in self-defense or fear of violence. vi. The age of the offender.
10. The circumstance of the matter is that the accused committed a heinous act, kidnapping the victim and threatening to kill him if ransom was not paid. When the payment turned out unpaid, the victim was murdered.
11. This was a demonstration of malice aforethought. The accused, despite the gravity of his actions, has not yet acknowledged the offense nor pleaded remorsefulness or repentance.
12. This was a grave offense that is escalating in our jurisdiction, and this court has responded by meting out severe sentences.
13. Having considered the sentencing policy guidelines, mitigation, and circumstances of the case, including the 11 years the accused has been in custody, I make the order as follows.
 - i. The accused is sentenced to Thirty (30) years imprisonment.



The accused has been informed of his right to appeal against this ruling.

**RULING ON SENTENCING, DATED, SIGNED, AND DELIVERED AT NYANDARUA THIS
28TH DAY OF OCTOBER 2024**

CHARLES KARIUKI

JUDGE

