



**Republic v Muturi (Criminal Case 5 of 2014)
[2024] KEHC 14823 (KLR) (26 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14823 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 5 OF 2014
RM MWONGO, J
NOVEMBER 26, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

JOHN MURIITHI MUTURI ACCUSED

JUDGMENT

1. The accused person was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the 9th of February, 2014 at Kabonge village in Kirinyaga West district within Kirinyaga County, he unlawfully murdered Mary Waruguru Ndungu.
2. After a full hearing the accused was convicted for manslaughter. On 23rd October, 2024 mitigation followed thereafter and a Probation Officer's Report was also availed.

Brief facts

3. The brief background of the case is that on 9th February, 2014 at about 8pm, the deceased then aged 53 years, went to Kabonge Shopping centre to refresh herself at a pub christened "Rehema Bar." She looked cheerful until she left the said bar and headed home approximately 3 kilometers from the Shopping Centre.
4. The following day being the 10th February, 2014s, her body was discovered lying down near her homestead with injuries on her face and eyes. On 11th February, 2014, the accused herein (John Muriithi Muturi) the deceased nephew was arrested and his blood-stained shirt was recovered and taken to the Government Chemist. The Police after combing the scene of Crime took the exhibit recovered and prepared the necessary Exhibit memo that was eventually taken to the Government Chemist.



5. In his Post Mortem Report dated 14th February, 2014 the pathologist formed the opinion that the cause of death was multiple injuries to the head and chest due to severe blunt force trauma. Death Certificate No. 453722 was signed and issued on 14/2/2014.

Mitigation

6. The accused counsel mitigated as follows: the accused is remorseful for the offence. He has been in custody since 9th February, 2014, a period of 10 years and the sentence should factor the time spent in custody. The accused has undergone rehabilitation programs while in prison and has received ten certificates which include: The Prisoner's Journey program, Diploma in Theology and Prison Project. He also did KCPE while in prison and is currently in High School. He has reformed and is ready to be released back to society.
7. The prosecution submits that this is a murder case carrying a death sentence. The accused had a right to bail and spending 10 years in custody was his choice. The probation report is not favourable. They seek for a custodial sentence.
8. The Probation Officer's Pre-Sentence Report dated 15th October, 2024 is unfavourable. The victim's family are still bitter with him and request the court to pass a custodial sentence. The community finds him as a threat to their safety and as such they would prefer a custodial sentence for deterrence.

Analysis and Determination

9. The issue for determination is what is the appropriate sentence for the accused.
10. The accused was convicted with Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. The sentence for the offence of Manslaughter is provided under Section 205 of the Penal Code which provides:

“205. Any person convicted of manslaughter is liable to imprisonment for life.”

11. The circumstances of the offence are that the accused person assaulted the deceased person with a blunt object causing internal bleeding that resulted in death. The accused's counsel in his mitigation stated that the accused is 28 years old. He is remorseful for the offence. He has not yet started a family of his own and has a full life ahead of him.
12. The accused has undergone rehabilitation programs while in prison and has received certificates which include: The Prisoner's Journey program and Prison Project He seeks for a non-custodial sentence since the accused has been in prison remand for 10 years.
13. Whilst the prosecution seeks a custodial sentence, the defence seeks a non-custodial sentence.
14. The Probation Officer's Pre-Sentence Report dated 15th October, 2024 is unfavourable. The victim's family are still bitter with the accused and request the court to pass a custodial sentence. The community has time over grown less hostile towards him but wish for precaution to be taken.
15. It was noted that the Court of Appeal held that life imprisonment was unconstitutional. In the case of *Julius Kitsao Manyeso v Republic* (Criminal Appeal 12 of 2021) [2023] KECA 827 (KLR) (7 July 2023) (Judgment). The Court stated:

“We are of the view that having found the sentence of life imprisonment to be unconstitutional, we have the discretion to interfere with the said sentence. We note in this respect that the appellant did raise the concern of his sentence of life imprisonment



while he was 18 years of age in his first appeal... We, therefore in the circumstances, uphold the appellant's conviction of defilement, but partially allow his appeal on sentence. We accordingly set aside the sentence of life imprisonment imposed on the appellant and substitute therefor a sentence of 40 years in prison to run from the date of his conviction."

16. 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.
17. The court has discretion in determining the nature of the sentence to impose. In *Republic v Winnie Adhiambo* [2016] eKLR Lesit J held:

"I have also considered Section 205 of the Penal Code which shows clearly that a person convicted for the offence of manslaughter is liable to imprisonment for life. That means the court can exercise discretion in determining the nature and term of the sentence to impose against the accused person."

The accused in that case was sentenced to 9 years' imprisonment after conviction for manslaughter.

18. In *Republic v Mwangi (Criminal Case E088 of 2023)* [2024] KEHC 367 (KLR) (25 January 2024) (Sentence), it was held:

"The court has to balance between the need to have the accused atone for her actions and the need to exercise leniency, given the circumstances of the case. In this regard I think that the sentence proposed by the State is appropriate and within the range of sentences meted out in similar cases.

Having considered all the circumstances of the case I hereby sentence the accused to nine (9) years imprisonment."

19. According to The Judiciary Sentencing Policy Guidelines:

"The proviso to section 333(2) of the Criminal Procedure Code obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an offender, the court



must take into account the period in which the offender was held in custody during the trial.”

Disposition

20. Under Section 333(2) of the Criminal Procedure Code, the accused’s sentence should commence on 9th February, 2014 when he was first remanded into lawful custody.
21. Accordingly, I hereby sentence the accused to seventeen (17) years imprisonment commencing from the date of his first imprisonment.

Orders accordingly.

DELIVERED AT KERUGOYA THIS 26TH DAY OF NOVEMBER 2024

R. MWONGO

JUDGE

Delivered in the presence of:

1. Accused: Present in Court
2. Wambui: for the Accused
3. Mamba for the State
4. Court Assistant, Murage

