



**Republic v Tama (Criminal Case E027 of 2021)
[2024] KEHC 14786 (KLR) (26 November 2024) (Sentence)**

Neutral citation: [2024] KEHC 14786 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE E027 OF 2021
RM MWONGO, J
NOVEMBER 26, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

SIMON KATHIGA TAMA ACCUSED

SENTENCE

1. The Accused is charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence are that on the 17th November, 2020 at Togonye village, Murinduko Location in Mwea East sub-county within Kirinyaga County he murdered Beth Wathimu Kathiga.
2. On 17th June, 2021 he pleaded not guilty to a charge of murder. On 2nd November, 2023 the accused stated that he would change his plea, and he pleaded guilty to murder. Consequently, the matter was fixed for mitigation on 6th April, 2024.

Summary of Facts

3. On the 17th November, 2020 at Togonye village at about 10 am, the deceased while in the company of her colleague was busy sorting out miraa along Tongonye Road, when she spotted her husband the accused. He was riding a motorbike as a pillion passenger. He jumped from the motorcycle and headed straight to the deceased. He stabbed her on the eye, stomach and on her back before he quickly disappeared into the nearby coffee farm still holding a kitchen knife. People screamed but the deceased had already fallen on the ground bleeding profusely and quickly went into a coma. She was rushed to Karira Mission Hospital in Mwea where she was pronounced dead on arrival.
4. On 2nd June, 2021, the accused was spotted at Kimunye market by the relatives of the deceased who alerted the police and he was quickly apprehended.



5. The post-mortem Report of the deceased dated 23rd November, 2020 indicates the cause of death to be massive internal/ external bleeding caused by penetrating chest injury following assault with a sharp object.

Mitigation

6. In mitigation, the accused's counsel stated: The accused is 43 years old. He is remorseful for the offence. He is a 1st offender. He pleaded guilty for the offence and saved precious judicial time. The victim was his wife and he did not intend to kill her. They had three children and he is their father figure. He seeks leniency. The children are at his home with his brother. He has been rehabilitated while in prison and has certificates for courses completed.
7. The prosecution submits that no reconciliation has been initiated between the accused and the victim's family. The accused intentionally killed the deceased and then disappeared. The prosecution indicated that whilst awaiting his murder trial, the accused would send proxies to the deceased's family. Reports were made to the police and entered into OB reports. They seek the most severe sentence since the deceased was only 41 years old.
8. The Probation Officer's Pre-Sentence Report dated 5th December, 2023 is unfavourable. The victim's family and his children are still bitter with him and request the court to pass a severe custodial sentence. The community finds him as a threat to their safety and as such they would prefer a custodial sentence for deterrence.
9. The question in issue is what is the appropriate sentence for the accused.

Analysis and Determination

10. The accused was convicted on his own plea of guilty for murder, which has saved precious judicial time. Sections 203 and 204 of the [Penal Code](#) under which the accused is charged provide for the offence of murder and the punishment for it as follows:
 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.
11. The circumstances of the offence are that the accused person stabbed the deceased person with a sharp object on the eye, stomach and back causing internal/external bleeding that resulted in death.
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. However, it did not outlaw the death sentence. Murder convicts now have a constitutional right to mitigate prior to sentencing, and that such mitigation must be taken into account by a court in exercise of its sentencing discretion.
14. In particular the Supreme Court at paragraph 48 of its judgment in *Muruatetu* stated:
- (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. In his mitigation, the accused stated that he is remorseful and regrets his action. Further, he said he has three children who will need his care and support. He submitted that while in custody he attained life skills and has improved his mental wellness.
16. The Probation Officer's Pre-Sentence Report dated 5th December, 2023 is unfavorable. It states that the victim and the community request for a severe sentence for them to perceive that justice has been served. It points out that there has been no reconciliation between the two families despite the offender's expression of remorse. It adds that the children are in safe custody of their maternal grandparents and perceive the accused as a potential danger to them.
17. It is well settled law that a sentence must reflect the accused's blameworthiness for the offence. In *Omuse v R* (2009) KLR 214, it was held that the sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that the proper exercise of discretion in sentencing requires the Court to consider that fact and circumstances of the case in their entirety before settling for any given sentence.

Period spent in custody

18. The period spent in custody should be considered in sentencing the accused. The accused has been in custody since 17th June, 2021. In the case of *Republic v Isaac Wanjala Murumba* [2021] eKLR, it was held that:

“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.”

Conclusion and Disposition

19. Taking into account the aggravated circumstances of the offence, and considering the mitigation and probation report, it is in my view that the accused's actions have had a great impact on the family and the community. Accordingly, a custodial sentence is appropriate in this case.



20. In *Mwei v Republic* (Criminal Petition 104 of 2020) [2022] KEHC 13045 (KLR) (21 September 2022) (Judgment) it was 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.”

21. In the present case. The accused was not indicated as being intoxicated; there was no fight; there is no indication that he was provoked. He acted abruptly coming on a motor bike armed with a knife, attacked and stabbed the deceased and then fled.
22. In light of the foregoing, I hereby sentence the accused to a term of twenty-six (26) years imprisonment. The sentence shall take into account any time he has already spent in custody.
23. Orders accordingly.

DELIVERED AT KERUGOYA THIS 26TH DAY OF NOVEMBER, 2024

R. MWONGO

JUDGE

Delivered in the presence of:

Simon Kathiga Tama: Accused: Present in Court

Nyaga: for the Accused

Mamba: for the State

Court Assistant, Murage

