



**Republic v Kiongo (Criminal Case 79 of 2016)  
[2024] KEHC 16363 (KLR) (20 December 2024) (Sentence)**

Neutral citation: [2024] KEHC 16363 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE 79 OF 2016  
DO CHEPKWONY, J  
DECEMBER 20, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**STANLEY KIONGO ..... 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 offence are that:-  
  
“On 25<sup>th</sup> day 2007 at Rusingiti village in Kiambu District (now County), the accused murdered Lucy Nyokabi Ngugi.”
2. In its Judgment delivered on 20<sup>th</sup> September, 2024, the court found the accused guilty and convicted him for the offence of murder. The court then called for a social inquiry to be conducted on the accused and a Presentence report to be filed which was done on 15<sup>th</sup> November, 2024. In conducting the inquiry, the Probation Officer considered the family background of the accused, his personal history, circumstances of the offence, attitude towards the offence, the views of the victim, community’s attitude towards the offender and the offence in coming up with the conclusion and recommendations in the pre-sentence report.
3. According to the probation officer, the Accused is a 29 year old man who is married with one young daughter. It is reported that the offence occurred when he was only 12 years he was placed in Nairobi Children Remand at Lower Kabete where he escaped and went on to live his life until 2016 when the outstanding charges resurfaced and he was rearrested. It will be noted that the accused has remained in custody since then.



4. It is also stated that the Accused has been well rehabilitated given that he has engaged in counselling, bible study and crime prevention programs where he has reflected on his past mistakes and attributed his behaviour to challenges of teen-hood, limited guidelines, lack of role models, peer pressure and lack of constant supervision. His family hold that they have witnessed a big change in the Accused person and they are ready, able and willing to receive him back into the society. They have urged for a lenient sentence.
5. On the part of the victim's family, it is reported that the victim was only 9 years old at the time of her death and they had to relocate to Nyandarua County to heal from the loss and find a new beginning. It is reported that despite the grief, the victim's mother she holds no resentment towards the accused or his loved ones whom they once shared a community with and hopes the court will render a fair decision that takes into account the loss they endured.
6. The area chief contends that the accused person no longer poses as security threat either to himself or the community and has stated that the community is ready and willing to embrace him back and offer him support for reintegration. The chief also expressed his willingness to supervise the accused if the court grants him a lenient sentence.
7. The prison authorities confirm that while in remand, the accused maintained good conduct, respected authority and avoided violent behaviour or involvement in any crime. They have recommended him for reintegration back into the community, if granted lenient sentence.
8. In conclusion, the probation officer holds that the accused committed the offence when he was a minor, without emotional maturity and conflict resolution skills and he has shown genuine remorse and made meaningful progress in rehabilitation for the years he spent in custody. That since he has the support of his family and the victim's family has expressed a sense of healing while indicating that they have no resentment towards the accused, he has potential for successful reintegration.
9. The court has also read through the Letter dated 7<sup>th</sup> October, 2024 from the Kenya Prisons Service wherein the accused person has highly been recommended based on his current attitude and behaviour. He is reported to have been working as a peer counsellor, is a born again Christian and was baptised while in prison, has undergone various counselling sessions and theological courses such as Silver, Gold, Bronze, Emmaus Bible School, Safari ya mfungwa and many others.

### **Analysis and determination**

10. In considering the sentence to mete against the accused person, I have read through the mitigation statement by the accused person alongside the findings and recommendation by the probation officer on the pre sentence report filed on 15<sup>th</sup> November, 2024.
11. It is trite that the punishment for the offence of murder under the law is the death penalty which has since been declared unconstitutional by the Supreme Court in the case of *Francis Karioko Muruatetu and Another -v- Republic and Others* 2015 eKLR. Also the court notes that under Section 25 (2) of the *Penal Code*, it is provided that:-

“Sentence of death shall not be pronounced on or recorded against any person convicted of an offence if it appears to the court that at the time when the offence was committed he was under the age of eighteen years.....”
12. In this case, it is noted that the offence was committed when the accused was 12 years old and he was remanded at the Nairobi children's Remand Home but he escaped from remand prison. That he was rearrested in the year 2016 by which time he was already an adult and has since been in custody to date.



13. The court has taken note the positive recommendations from his family , the probation officer and the prison services which show that the Accused person has since reformed and is suitable to be reintegrated back into the society. The court has also taken note the sentiments of the victim's family who indicate that they do not hold any resentment towards the accused person and his family. Further, the community views that the accused is no longer a security threat to either himself or the community.
14. In that respect, the court finds that the Accused person is deserving of lenient sentence. Given that the accused has been in custody since 2016 which is approximately 9 years now, the court finds that the Accused person has since learnt his lesson. From the reviews of the prisons department, he has been well rehabilitated which is in line with the principles of sentencing. and thus the term served in remand is found to be sufficient.
15. The court thus proceeds to issue the Accused a non-custodial sentence and places him on probation for a period of three(3) years on condition that:-
  - a. The accused person must obey the Supervisory Probation Officer and comply with any condition set by the Probation Department.
  - b. He must remain of good conduct.
  - c. He must not commit any offence during the probation period.
  - d. The Accused must attend guidance and counselling sessions to be organised by the Probation Department.
  - e. Failure to comply with any of the above conditions, the accused will be arrested and brought back to this court for a custodial sentence to be passed against him for the remainder of the three (3) years sentence.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 20<sup>TH</sup> DAY OF DECEMBER , 2024.**

**D. O. CHEPKWONY**

**JUDGE**

