



**Republic v Kamau (Criminal Case 37 of 2018)
[2023] KEHC 17664 (KLR) (25 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17664 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 37 OF 2018**

TM MATHEKA, J

MAY 25, 2023

BETWEEN

REPUBLIC PROSECUTION

AND

DANIEL MUGO KAMAU ACCUSED

RULING

1. Daniel Mugo Kamau was charged with murder contrary to section 203 as read with section 204 of the *Penal Code*. It was alleged that on 22/7/2018 at Banita Farm Solai, Rongai Sub-county within Nakuru County murdered Musa Kiprop Chirchir.
2. He denied the charge but after the trial he was found guilty and convicted accordingly on 22/3/2023.
3. To assist with the sentence, I sought a pre-sentence report which was filed on 25/5/2023.
4. It is of noteworthy that the report presents three scenarios of what could be the circumstances of the offences. The accused takes responsibility for the offence only on the ground that he organised some youths to deal with some thugs who he alleges attacked his home– which is a complete change from his own statement of defence that he was not involved in the murder in any way.
5. Another scenario presented in the report is the version from the family of the deceased that the accused snatched the deceased’s phone and the deceased followed the accused to his home where the accused cut the deceased with a panga . There is the other scenario said to be from the community – that the deceased was a bother to the family as he had previously attempted to sexually assault the mother of the accused person (who is mentally challenged) prompting the accused to go back home to live with his parents. The local administration blamed the deceased for his death.



6. The report goes no to state as a fact that the body of the deceased was found in the home of the accused – thus drawing the inference that the deceased ventured into the home of the accused person with ulterior motives.
7. It is evident these scenarios were not brought in by way of evidence either by the prosecution or the defence. through the acceptable way of evidence of witnesses in court. It would not be tenable for the court to go by any of these versions.
8. In addition, the Probation and After Care Services Officer concludes that the deceased was to blame for his death – that had he not provoked the family of the accused he would still be alive.
9. From the report it is noteworthy that the secondary victims of the offence are still bitter about the killing of their kin. They also express blame towards the failure of the police at Banita to investigate better and bring to justice other persons they believe were involved in injuring another member of their family.
10. With the foregoing the Probation and After Care Service’s officer recommends three-year non-custodial sentence on Probation Supervision.
11. As demonstrated herein above I have carefully considered the pre-sentence report and I must state here that this is one of those reports that makes me say it is a relief that the report is not binding. This is because it is not balanced. The accused is wish washy about his responsibility for the crime. He takes some responsibility, blames other people and other times out rightly denies it. The report does not say much about the accused person and his character, and contains no explanation as of the basis for the recommendation of non-custodial sentence. Neither does the report speak to what it is the Probation and After Care Services officer would be working on with him during the supervision period.
12. In the circumstances, I have considered the circumstances of the case, the accused person’s statement in mitigation and that he is a first offender The law provides for the death sentence but with its mandatory nature being declared unconstitutional, the general sentence instead has been a period of 30 years’ imprisonment.
13. The accused is a first offender. He has been in custody since 25th July 2018. He is sentenced to 15 years’ imprisonment with effect from 25th July 2018.
14. Right of Appeal within 14 days.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 25TH MAY 2023

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MUMBUA T. MATHEKA

JUDGE

CA Ruth

Accused present

Ms. Murunga for state

Ms. Odande for the accused

