



**Republic v Machoka (Criminal Case 27 of 2015)  
[2023] KEHC 17660 (KLR) (25 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17660 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL CASE 27 OF 2015  
RE ABURILI, J  
MAY 25, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**SAMSON MATOKE MACHOKA ..... ACCUSED**

**JUDGMENT**

1. This case involved three accused persons who were all inmates at Kisumu Main Prison and who were jointly charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. They were found guilty of the said charge, convicted and sentenced to mandatory death penalty as stipulated in section 204 of the *Penal Code*. The second accused person in the instant case is Samson Matoke Machoka. The victim of the offence was also an inmate at the said prison, one, Harrison Okumu. The date of offence was on May 20, 2015. The offence which took place in Kisumu Main Prison and from the evidence on record, the accused used metal pipes and a knife to hack the deceased to death on account that he was rivalling them over a 'lover' a fellow man in prison.
2. At the time of commission of the said offence, the second accused person herein was already serving life imprisonment following conviction for the offence of robbery with violence in a totally different case before Kisii Chief Magistrate's Court wherein he was sentenced to death but the death sentence was later commuted to life imprisonment.
3. Aggrieved by the death sentence imposed by the trial judge, the accused herein filed an appeal to the Court of Appeal vide Court of Appeal Criminal Appeal No. 119 of 2017 at Kisumu. Vide Memorandum of Appeal dated November 2, 2020, the second accused herein only sought for resentencing under articles 165(3) (a) (b), 159(2) (a) (b) ad 22(4) of *the Constitution*, bearing in mind the Supreme Court decision in *Francis Karioko Muruatetu vs Republic* (2017) eKLR.



4. In other words, the appeal was only against sentence and vide the Order of the Court of Appeal made on October 17, 2022, (Kiage, Tuiyott and Joel Ngugi JJA), the learned Judges of the Court of Appeal allowed the appeal on sentence and remitted the matter to this court for hearing on sentence.
5. That is how this very old case found itself bouncing back to this court for reconsideration on sentence hearing.
6. I reiterate that the accused was already serving death sentence which was imposed on him vide Kisii Chief Magistrate Criminal Case No. 955 of 2005 on May 14, 2007 by Hon. M. S. Soita Ag. SPM which death sentence on several convicts of robbery with violence was later commuted to life imprisonment.
7. However, following Kisii High Court Constitutional Petition No. 36 of 2019 the accused herein was resented to serve twenty (20) years imprisonment from June 4, 2005 which prison term the convict herein is about to complete, if he has not completed since he has been in prison now for over 18 years.
8. Assuming he was eligible for remission, he could have completed sentence and returned home to his family upon receipt of the Court of Appeal order on resentencing, had it not been the sentence imposed on him in this case.
9. This court served the accused person's counsel Mr. Okoyo and the ODPP with Notice to appear and argue the plea for resentencing.
10. Mr. Okoyo submitted that his client had since reformed, that he was remorseful. That the court should consider exercising discretion in sentencing the accused, impose a custodial sentence which should be suspended pending the conclusion of the previous sentence in Kisii Criminal Case No. 955 of 2005.
11. The accused submitted that he had reformed and was of good character; that he had suffered and was now 43 years old meaning he was about 25 years when he was first arrested and charged with the first offence of robbery with violence in Kisii CM's Court before he found himself in trouble in prison.
12. Obviously, the accused is not a first offender. He committed this offence of murder which involved the murder of a fellow inmate while he was serving death sentence in a series of robberies case where, besides the death penalty, he also faced other charges such as being found in possession of public stores, which was a firearm for which he was sentenced to serve seven (7) years imprisonment. It is therefore not expected that prisons authorities would give him a clean bill of health in character change since he committed this offence while serving death sentence which was commuted to life imprisonment on August 3, 2009. He however claimed that he had reformed and had been trained in mechanics and church matters.
13. Mr. Okoth Snior Principal Prosecution Counsel submitted that although sentencing is discretionary, the accused produced nothing from the correctional facility to demonstrate that he had changed or reformed.

### **Determination**

14. I have considered the submissions in mitigation by the accused person's counsel, the accused himself and the prosecution counsel. I have also considered the mitigations which the accused did not have the opportunity to benefit from during his conviction and sentencing as the court then rightly so found that the only lawful sentence provided for in law was death and I say rightly so because the Judgment and sentence in this case was rendered on July 24, 2017 before the Supreme Court pronounce itself in December 2017 on the Constitutionality of the Mandatory death sentence conviction for murder.



15. As at the time that the accused committed this offence, he had been in prison custody for 10 years from 2005. He was a young adult when he was placed behind bars. He is now 43 years old. He appears well kempt meaning he has adapted to prisons conditions and made it his home. Readaptation back into the society will obviously take time for him in view of the stigma associated with being an ex-prisoner, especially for violent crimes of murder and robbery with violence. However, the accused person herein chooses to live an honest life free from crime, then he will find it easy to adapt. On the other hand, if he has not learnt anything positive in prison, then he will find it hard to adapt and since the arm of the law is long enough, he will still be captured and he might just not have a second chance next time round The *Francis Kairoko Muruatetu vs Republic* (*supra*) case and the pronouncement by the Supreme Court in the said case set the pace for the conversion of death sentences to custodial term sentences having regard to the circumstances of each case and the mitigations by the convict in this case.
16. The accused was already in prison when he committed murder and the death arose out of a fight over a fellow prisoner who was being used as a lover. The accused and his co-convicts used weapons which were not allowed in prison to hack their fellow inmate to death.
17. As correctly submitted by both counsel, sentencing is in the discretion of the court. There is no testimonial from prison authorities on the accused but as I have stated earlier on, the accused having committed a heinous offence while in prison, it is unlikely that he would get a positive recommendation. He pleads for a second chance. He has been in prison since 2005 following a conviction in another offence of violent nature. He was no doubt a dangerous person in society and the society had to be protected from such violent people.
18. However, he pleads for leniency of the court saying he has changed and trained in mechanics and church matters. He however has not received his certificate in mechanics.
19. Considering all the above, I exercise discretion and set aside the death sentence imposed on the accused person and substitute the death sentence with prison term sentence of ten (10) years to be calculated from May 20, 2015 the date of commission of the offence as he was already in prison custody. In the event that the accused has not completed the 20 years imprisonment resented in the robbery with violence, then the 10 years imprisonment herein remains suspended until he completes the earlier prison term.
20. I so order and mark this file as closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 25<sup>TH</sup> DAY OF MAY, 2023**

**R. E. ABURILI**  
**JUDGE**

