



**Republic v Njoroge (Criminal Case 13 of 2016)
[2023] KEHC 17957 (KLR) (25 May 2023) (Sentence)**

Neutral citation: [2023] KEHC 17957 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 13 OF 2016**

TM MATHEKA, J

MAY 25, 2023

BETWEEN

REPUBLIC PROSECUTION

AND

STEPHEN KINUTHIA NJOROGE ACCUSED

SENTENCE

1. Stephen Njoroge Kinuthia was found guilty and convicted of murder contrary to section 203 as read with section 204 of the [Penal Code](#) for the murder of his brother Paul Mwiko Njoroge.
2. The court heard his mitigation which was full of remorse for the acts that led to the death of his brother, and the pain caused to his family. The accused conceded a fact supported by the facts of the case that both the accused and the deceased abused alcohol, and the act that led to the death of his brother happened when both were drunk.
3. The accused person has been in custody since 2016 – when the offence was committed – and pleads with the court to find that he has served his punishment for what he did.
4. With respect to the offenders background the pre-sentence report filed on April 19, 2023 states:

The accused is aged 40 years. He is said to have been a troublesome child for a long period. This is indicated by his behavior of school life. Our inquiry established that he went to a total of four secondary school which includes Menengai High School, Naivasha Mixed School, Koel High School and Lanet Secondary School before he finally sat his KCSE as a private candidate and obtained a grade C. The accused is said to be on strained relations with most of his family members except his mother. He admits to have been a regular user of illicit alcohol and narcotic sativa. Generally, his life has been on a down slope. It is said that when drunk he becomes violent and destroys the family property. This could a way of projecting his displeasure to the family who he thinks have ganged up on him. After his KCSE, he took



up a journalism course and eventually got himself employed un the same college to teach journalism. He could not keep his job due to his lifestyle and he eventually returned home to stay with his parents.

5. When the family was interviewed the report states the findings thus

The family which is the secondary victim has shown a lot of displeasure towards the accused person. During the inquiry only the mother talked positively of the accused. His father and the rest of his siblings. According to them the accused has been abusing their goodwill and they no want him home. They want him to be separated from the community.

6. The local administration through the assistant chief Kirima sub-location.

'Confirmed the family hails from his area of jurisdiction. She stated that the accused did not express his criminal activity to the community but mostly to the persons and property of the immediate family. The community according to the chief would not have any problem(sic) that the affected family may take, for or against the accused in the spirit of non-interference with another family internal issues.'

7. With respect to the offender's attitude to the offence the report further states;

The accused admits to the offence as charged. He states they were both intoxicated when they quarreled and fought. The fight led to the death of the victim

He takes responsibility of his actions. He states that he was drunk when he committed the offence and his judgement was inhibited

8. With this information the officer makes the following recommendation;

'The accused is an adult male of 40 years, single, with criminal record mainly expressed against his immediate family members. Our inquiry established that the family and the community are not yet ready for the accused reintegration back in the community. He therefore has no social capital in his favour. The court may, having regard to the above information, make a sentencing decision.'

9. Evidently offender's family is still upset that whenever accused got drunk, he would destroy family property/ hurt family members – however, this was never extended to the other community.

10. In addition to this report the accused person submitted in mitigation that he was deeply sorry about the fight with his brother and does not know how he will live with the fact that the fight led to the death of his brother whom he loved deeply. That in the period he has been in prison he has taken various courses in prison, he has met Christ in prison – and he is a changed man. He seeks a non-custodial sentence that will enable him to be active in society. That he does not have to go back home if the family does not want him and he could relocate elsewhere.

11. I have carefully considered the report, and the mitigation by the accused person. Section 204 of the Penal Code provides for the death sentence – which many courts have revised to 25-30 years' in cases where parties have sought re-sentence under the Muruatetu principle.

12. The court is required to consider the objectives of sentencing as per the sentencing guidelines, and the circumstances of the case – which include those of the accused, the victim, and the public interest.

13. In the circumstances of this case further the accused person fought with his brother and kicked and threw him so viciously that he died. In my view the force behind his vicious attack was some unresolved



sibling rivalry that was revealed through the statements he made during the fight in the presence and hearing of witnesses.

14. This is a family problem and it appears to me that the family – (his father and siblings) do not know how to deal with. The evidence of this is in the substance abuse exhibited by both the accused and the deceased and their lifestyle as was testified to during the trial. Perhaps if the underlying problem had been solved there would not have been a death. Simply refusing to have anything to do with the accused person does not heal the wound that was caused by the death – it only escalates it because the fact is deceased cannot come back and the accused cannot be in prison forever.
15. So here lies my concern as a sentencing court with the pre-sentence report. It completely blacks out the offender’s efforts to improve himself in prison and his remorse, and the fact that there is no indication as to whether these family ties could be healed taking into consideration the mother’s view of her son. I would have expected that taking into consideration the period the offender has been in custody, as the professional in the area he would have made proposals as to what can be done to heal the family wound that is apparently still gaping open.
16. Ultimately justice will be served when there will be a family reconciliation, forgiveness and healing. Justice is not about punishment but restoration as well and this court is bound by the Constitution to ensure that justice is served.
17. Guided by the sentencing guidelines and precedents in similar cases I have considered that accused has been in custody for 7 years. He is not considered a threat to his family or community. The family did not express fear that if he came out he would hurt them. They expressed displeasure because he has abused their goodwill. It does not look like they are aware of the changes he has made in his life while in prison and that he has indeed served part of his sentence while in prison custody. Perhaps that would allow them to give him a second chance.
18. This is where the importance of half-way house system in our Criminal Justice System comes in and would work very well. It is something that Correctional Services need to consider and to put in place to enable families such as the one in this case and the offender to have time to work out issues before the offender goes home and the offender would be in a place that helps him build independence while weaning himself out of incarceration. It is recommended that the Kenya Prisons Service considers this as the way to go and pursues it as a matter of reform.
19. That being unavailable the court has to do with the available resources. In the circumstances the accused would have been liable to 30 years’ imprisonment but he is a first offender so the starting sentence is 15 years. There aggravating circumstances were in the fight that led to the death of his brother, but there are mitigating factors which take off a year and a half from that. The accused is sentenced to 13 and a half years’ sentence. By virtue of s 333(2) of the Criminal Procedure Code the sentence will run from March 2, 2016.
20. During the remaining period in prison the PACS to start the family reconciliation process. In addition, upon release from prison he is to be under probation supervision for 18 months.
21. This order be served upon the Probation After Care Services Office, Nakuru and the Officer in Charge Nakuru GK prison for compliance.
22. ROA 14 days

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 25TH DAY OF MAY 2023

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MUMBUA T. MATHEKA

JUDGE

CA Ruth

Accused person

Ms. Murunga for state

Mr. Murunga for the accused

