



**Republic v Daddy & 3 others (Criminal Case 69 of 2014)
[2023] KEHC 21022 (KLR) (Crim) (31 July 2023) (Sentence)**

Neutral citation: [2023] KEHC 21022 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 69 OF 2014
K KIMONDO, J
JULY 31, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

SAMUEL OCHIENG DADDY 1ST ACCUSED

GEOFFREY OBWAGE ONDIEKI 2ND ACCUSED

ASIFU NYAKUNDI ONYAMO 3RD ACCUSED

COLLINS RAMADHAN ISSA 4TH ACCUSED

SENTENCE

1. The four accused persons were adjudged guilty of murder by the High Court (Wakiaga J). The learned judge is on transfer and has remitted the matter to me for sentencing.
2. On July 14, 2023, I conducted a brief sentencing session and heard submissions from the learned counsel for the accused, Mr. S. Ojienda, and learned Prosecution Counsel, Ms. Gikonyo.
3. This is a grave felony that attracts the death penalty. However, following the momentous decision of the Supreme Court in *Francis Karioko Muruatetu & another v Republic*, Consolidated Petitions Nos. 15 & 16 of 2015 [2017] eKLR, the mandatory nature of the death sentence as provided for under section 204 of the *Penal Code* was declared unconstitutional. This did not outlaw the death penalty, but it left the court with discretion to impose a lighter sentence.
4. I have considered the circumstances surrounding this offence. On the night of August 28, 2012, the four accused persons and the deceased were sharing cell number 14 at Kamiti Maximum Prison. The deceased was in good health but was found dead the following morning. According to the pathologist,



the body had scars on the chest and neck: the tongue was protruding outside which was consistent with strangulation. The accused committed the heinous act either in order to gain access to contraband (a cell-phone) or were motivated by cravings for a homosexual relationship.

5. From the facts above it is also apparent that the accused persons were serving other sentences at Kamiti Maximum Prison. To be precise, all of them had been convicted for robbery with violence. The 1st, 2nd and 4th accused persons were sentenced to death but which has since been commuted to life imprisonment. The 3rd accused was sentenced to 10 years imprisonment.
6. I have also taken into account the mitigation tendered by their learned counsel. Principally, he argued that they were remorseful; that they have lost their days of youth in prison; and, that they should be granted an opportunity to open a new chapter in their lives. In a synopsis, it was a plea for clemency.
7. I have also paid heed to the pre-sentencing reports for each of them. Those relating to the 1st, 3rd and 4th accused persons were filed on July 3, 2023 while that of the 2nd accused was lodged on July 20, 2023.
8. The Victims Protection Act dictates that the views of the victim's family be considered at this stage. The deceased was 40 years and also serving a life sentence for robbery with violence. His kin assert that at the time he met his death, he was "in the process of filing an application for resentencing". The view of the family is that notwithstanding that the deceased was a convict, they still looked up to him and he did not deserve such a gruesome death. They now crave for justice.
9. Sentence should be commensurate to the moral blameworthiness of the offender but also guided by the nature and gravity of crime. As I have stated, each of the accused is serving another sentence for robbery with violence. Justice in this case can only be met by a lengthy custodial sentence. I sentence each of the accused to twenty (20) years imprisonment. As they have been in custody throughout, and in accordance with section 333 (2) of the *Criminal Procedure Code*, the sentences shall run from September 12, 2012, the date when they were first presented to court.
10. The accused have a right of appeal to the Court of Appeal within 14 days and as per the Rules of that court. A copy of the proceedings, judgment and sentence shall be supplied to them immediately.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JULY 2023.

KANYI KIMONDO

JUDGE

Sentence read in court through Microsoft Teams in the presence of:

The accused persons.

Mr. S. Ojienda for all the accused persons instructed by Ojienda & Company Advocates.

Ms. Kigira & Ms. Gikonyo for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. E. Ombuna, Court Assistant.

