



**Republic v Munyua (Criminal Case 16 of 2019)
[2023] KEHC 21807 (KLR) (26 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21807 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL CASE 16 OF 2019**

**GL NZIOKA, J
JULY 26, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

STEPHEN NJOROGE MUNYUA ACCUSED

JUDGMENT

1. The accused was arraigned in court on 8th August 2019 charged with the offence of Murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the information are that on 27th day of July 2019 at unknown time at Gatamaiyo area in Naivasha sub-county within Nakuru County, he murdered Rebecca Wanjiku.
2. Apparently the accused could not take a plea because he was undergoing medical treatment at Mathari Mental and Referral Hospital. The matter was mentioned before the Honourable Deputy Registrar for quite some time until 5th November 2020, when the accused was presented before Hon. Justice R. Mwongo. Upon confirming that there was a report dated 22nd October 2020, that, the accused was mentally fit to take a plea, the plea was administered and he pleaded not guilty to the information cum charge.
3. On 29th April 2021 the court was informed by the state that, they were pursuing plea bargain negotiation and sought for the parties to be allowed time for the same. The matter was subsequently mentioned on several occasions, to record a plea bargain agreement but the same did not crystallise immediately as the accused was admitted at Mathari Mental & Referral Hospital on several occasions. On 27th May 2022, a report was received to the effect that, the accused was fit to stand trial and plea bargain negotiation continued.
4. On 7th December 2022, the court was given a mental assessment report but it was not clear as to whether the accused was capable of standing trial or not. A clearer report was requested for and/or the



physical appearance of the accused in court ordered for. On 13th March 2023, the accused was examined physically in open court and found to be coherent and appreciative of the proceedings. On 25th April 2023, the court was informed that the plea bargain agreement had been conceded. The matter was stood over to 30th May 2023 for the agreement to be filed.

5. On the material date, the prosecution presented a new charge sheet wherein the accused was charged with the offence of Manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#). The lesser charge was preferred following the plea bargain agreement. The charges were read to accused and he pleaded guilty thereto. He also confirmed that all the facts were correct as read to him. He was then convicted on his own plea of guilty. The state did not avail the accused previous records (if any) despite being accorded an opportunity for the same.
6. Be that, as it may, the pre-sentence report was availed by the Probation Department as ordered by the court. Similarly the defence counsel addressed the court on mitigation. The state left the matter to the discretion of the court. Having considered the entire matter I find that, the legal principles that govern sentencing are well settled as stated under clause 3 of the [Sentencing Policy Guidelines](#) here below: -

3.1 **Proportionality:**

The sentence meted out must be proportionate to the offending behaviour. The punishment must not be more or less than is merited in view of the gravity of the offence. Proportionality of the sentence to the offending behavior is weighted in view of the actual, foreseeable and intended impact of the offence as well as the responsibility of the offender.

3.2 **Equality/Uniformity/Parity/Consistency/Impartiality:**

Same sentences should be imposed for same offences committed by offenders in similar circumstances.

3.3 **Accountability/Transparency:**

The reasons and considerations leading to the sentence should be clearly set out and in accordance to the law and the sentencing principles laid out in these guidelines.

3.4. **Inclusiveness:**

Both the offender and the victim should participate in and inform the sentencing process.

3.5. **Respect for Human Rights and Fundamental Freedoms:**

The sentences imposed must promote and not undermine human rights and fundamental freedoms. In particular, the sentencing process must uphold the dignity of both the offender and the victim.

3.6. **International and regional standards on sentencing:**

Domestic law sets out the precise sentences to be imposed for each offence that courts must adhere to. In addition, international legal instruments, which have the force of law under Article 2 (6) of the [Constitution of Kenya](#), should be applied. Reference should also be made to recognised international and regional standards and principles on sentencing, which though not binding, provide important guidance during sentencing. Relevant international and regional legal instruments and guidelines include but are not limited to the instruments listed under this sub clause.



7. The Supreme Court of Kenya in the case of *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR gave guidelines in relation to sentence as follows:

“(71), the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

- a. age of the offender;
- b. being a first offender;
- c. whether the offender pleaded guilty;
- d. character and record of the offender;
- e. commission of the offence in response to gender-based violence;
- f. remorsefulness of the offender;
- g. the possibility of reform and social re-adaptation of the offender;
- h. any other factor that the Court considers relevant.”

8. Furthermore, the *Sentencing Police Guideline* formulated by the Judiciary as clause 4.1 states as follows:

- a. Retribution: To punish the offender for his/her criminal conduct in a just manner.
- b. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
- c. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
- d. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.
- e. Community protection: To protect the community by incapacitating the offender.
- f. Denunciation: To communicate the community’s condemnation of the criminal conduct.

9. In the instant matter, I have considered the circumstances of the cause to the effect that, the accused unlawfully killed the deceased who is his mother without any form of provocation. The only indication in the pre-sentence report is that, the accused who was staying with the deceased went home and demanded for food. That he disagreed with the mother and hit her with a blunt object, namely a stone and a piece of wood. Whatever the case may be, there is no plausible justification for what the accused did. The mother’s untimely death was uncalled for and unfortunate.

10. Indeed as indicated in the pre-sentence report, although, the family members appreciate that, he has a history of mental incapacity, none of them would want him released on a non-custodial sentence and neither are they ready to accommodate him. In addition the community is stated to be intolerant towards him. That, there are reports that he has been violent in the community, that he would chase women and strangle them before being overpowered by the community members. As such his security is not guaranteed in the community at Gatamaiyu Naivasha. Basically, the family members and the community left the issue of sentencing to the court.



11. Pursuant to the aforesaid, it is clear that the accused cannot be released back to the society. He needs to be kept away for a reasonable period of time to enable him undergo mental treatment, self-reflection and for his own security in addition to allowing the members of the public and family an opportunity to accept him back. It is not possible to re-integrate him back into the society. Therefore having taken into account the period he has been in custody since 8th August 2019 I sentence the accused to serve twenty (20) years imprisonment. Thus he will serve twenty (20) years less the four (4) years in custody. It is further ordered that upon released he shall relocate from the area where the offence was committed for his own safety. Furthermore, he shall be monitored on probation.

DATED, DELIVERED AND SIGNED THIS 26TH DAY OF JULY 2023

GRACE L. NZIOKA

JUDGE

In the presence of:-

Mr. Atika for the state

Mr. Bogongo for the accused

Accused present virtually

Ms. Ogutu - Court Assistant

