



**Republic v Mukira & another (Criminal Case 36 of 2016)
[2023] KEHC 21507 (KLR) (16 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21507 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 36 OF 2016
EM MURIITHI, J
AUGUST 16, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

SILAS MUKIRA 1ST ACCUSED

STANLEY THIAINE 2ND ACCUSED

RULING

1. The accused were convicted for murder c/s 203 as read with 203 of the Penal Code.
2. The Probation Officer has filed respective pre-sentence reports on the accused as follows:

Accused 1 Silas Mukira

The accused person is a man aged of 37 years with a family and children in primary school. He has been in custody for the last six years. He was out on bond which was suspended in 2018 after it was alleged, he was threatening the deceased's second wife. The deceased and the accused come from the same community and it has been confirmed there was some long-term conflict between them emanating from sale of some trees to the accused but refused to pay after splitting and selling timber.

The accused person concurs with the courts verdict and is pleading for leniency. He says he is ready to abide by any orders that may be given to him by the honorable court should he be considered for non-custodial sentence. He says he has spent about six years in remand prison and has learnt a lot. He further adds that he has a family that needs him and is pleading with the honorable court to consider him for non-custodial sentence.

The Primary Victim (second wife) is opposed to the accused being given any other form of punishment apart from live imprisonment. She says she suffered physically and emotionally



and her children failed to get quality education as a result of their father's death. She also raised issue of compensation saying she incurred a lot of expenses in the process of treatment and pursuing this matter. Others reached seemed not disturbed by the incidence herein and had even forgotten there was such a case going on. The first wife and her sons said the second wife is the one who has been pursuing the matter and would be in a better position to give her views. For them any decision by the court would be okay.

Deceased's brother seem to believe the accused could have been involved due to the conflict they had with the deceased but they feel the real murderers were left out yet they had been arrested and released. They seem to be very bitter with this aspect. For this reason, they suggest the court ought to punish him and they would be okay with any decision arrived at by the Honorable Court.

Family members of the accused person are pleading with the court to consider the accused for a non-custodial sentence. They say his young family needs him most at this time since the children are in primary school. They say they are ready for reconciliation now that the court process is coming to an end.

Majority of community members interviewed are for the idea of the accused being given non-custodial sentence. To them he is not a nuisance or a threat to the community.

Without disputing the Honorable Court's verdict, the local administration echoes the sentiments expressed by the majority of community and family members and equally recommend the accused be given non-custodial sentence especially after staying in custody for about six years."

Recommendation

"Given the above, your lordship, I urge the honorable court to use the information provided to arrive at the most appropriate sentencing option."

Njogu Julius Irungu

Probation Officer

Tigania

Date: 29/3/2023

Accused 2 Stanley Thiaine

"The accused person is a man aged of 55 years with a family and children in school. He was out on bond which was suspended in 2018 after it was alleged, he was threatening the deceased's wife. The deceased and the accused come from the same community and it has been confirmed there was some long-term conflicts between the accused and deceased where the accused had been jailed for five years. It's further said they reconciled before the Njuri Ncheke elders after he completed his jail term and were living harmoniously.

The accused maintains that he does not know anything about the matter, but when faced with the fact that the honorable court has convicted him, he prays for leniency. He states that he is ready for reconciliation as they did after he was jailed the first time. He adds that he has a family that needs him and is pleading with the court to consider him for non-custodial sentence.



Deceased's brothers seem to believe the wrong people were charged and the real perpetrators of the offence were left free. They are however not disputing the courts verdict and for this reason they propose he be given non-custodial sentence. The first wife and her children seem not bothered with what is going on and state that the second wife is the one who should give her sentiments since she excluded them from the proceedings of the case has been pursuing the matter. They say the final decision lies with the second wife and the court. They at the same time acknowledge they have been living peacefully with the deceased's family after the incidence and for the time the accused was out on bond there was no perceived hostility or potential threat to the safety of their family; that the second wife is the one who has been having issues with the accused.

The second wife is opposed to the accused being given any other sentence apart from jail term. She says she suffered both physically and psychologically and her children failed to get quality education after the demise of her husband. She also looks concerned on how she would be compensated for the physical loss and damages resulting from the death of the husband.

Family members of the accused person are pleading with the court to consider the accused for a non-custodial sentence. They say his young family needs him most at this time. They say they are ready for a reconciliation now that the court process is coming to an end.

The accused and the deceased come from the same community and majority of those interviewed recommend the accused to be given non-custodial sentence. They said the killers are known to everyone and that the accused and his co-accused are being used as "sacrificial lambs" by the deceased's second wife to settle "old scores". The local administration echoes the sentiments expressed by the majority of community members. They say though the accused was jailed they do not know him as a seasoned criminal or a threat to the community."

Recommendation

"In view of the above findings, your lordship, I urge the Honorable Court To use the information provided to arrive at the most appropriate sentencing option."

Njogu Julius Irungu

Probation Officer

Tigania

Date: 29/3/2023"

3. For the 1st accused, Ms. Kiyuki considered the negative pre-sentence report but prayed for leniency and urged non-custodial sentence pointing out that the accused was a first offender with a young family. The 1st accused himself pleaded for leniency as follows:

"I pray for leniency. I have been in custody for 5 years from 2016. I have never been involved in criminal activities. I have participated with studies in prison. I have a family. I have a young child who was born while I was in custody. I pray to present certificates of various trades while in prison."



4. For the 2nd accused, Mr. Atheru submitted as follows:

“I have seen the presentence report. The 2nd accused is remorseful in the circumstances of the matter and prays for leniency of the court. He is relatively young man who craves for a second chance in life as he has a young wife who went to Mombasa to be employed as a house maid to cater for her two children one who is in college and another in High School. He was a carpenter at Kianjai and used to take care of his family. He undertakes to fully reconcile with complainant through the authorities. He has been in custody since 20/6/2018. He was denied bail because he engaged in reconciliation with Njuri Ncheke without knowing it was unavailable to him. He has learnt his lesson. We pray for lenient sentence preferably non-custodial sentence.”

5. The 2nd accused added in mitigation that “my father died while I have been in Custody [and] I have children who are in school.”

6. In response, the Principal Prosecution Counsel Masila for the DPP gave the circumstances and impact of the killing on the victim’s family as follows:

“The Presentence report dated 29/3/2023 for both accused.

I rely on the Deceased’s family statement. Accused were emotionless, heartless when they committed the offence and they do not deserve mercy of the court.

PW1 victim was present when the offence happened and she was hit by a panga and sustained serious burns on her body and this was shown to the court when she testified.

Deceased was also inflicted with injuries by a panga with deep cuts and further sustained burns which led to his death.

Death by burning tops as most painful way of dying. The victim from the presentence report is still in fear as she had undergone personal injury and she is still undergoing treatment and psychological treatment; property was damaged.”

Appropriate Sentence

7. The sentencing proceedings was further animated by the contestation between Counsel for the DPP and the Accused as to the appropriate sentence and the suitability of the Death Sentence in the circumstances of this case. For the DPP, it was urged that the court ought to make some protective measures as well as compensation for the deceased’s wife as follows:

“The court can further order compensation in light of section 24 of the *Victim’s Protection Act*. I rely on Criminal case NO. 41 of 2014 *R v. Inspector Veronica Gitahi*.

Compensation for the victim from the *Victim’s Protection Act* Trust Fund under section 24 of the VPA.

The victim is apprehensive that her life will not be safe if a non-custodial sentence is meted out.

From the proceedings of 20/6/2018, bond was cancelled in light of interference with prosecution witnesses. It was reviewed and cancelled.

Muruatetu’s case did not outlaw the death penalty. The court may impose death penalty. Let the Court not order non-custodial or lenient sentence so that the accused can finish what they



started by killing PW1, wife of the deceased. The victim deserves protection of the court and the court need to send strong message that disputes should not be resolved through killing.

Principles of sentencing of deterrence, retribution and rehabilitation. The Circumstances of the case call for deterrence principle outweighing the other principles. The aggravating circumstances far outweigh mitigating circumstances.

Victim survived by stroke of luck. The deceased was killed in a defenceless situation when attacked in the presence of their children without justification.

The children had to watch as their parent died. Victim PW1 could not attend the burial of her husband as she was in hospital nursing severe burns occasioned by accused.

The children are left destitute with nowhere to go. The court can witness PW1 always comes to court in tears due to what happened.

The case requires a death penalty. Accused should never leave prison gates ever again in order to protect society and also the community. They are dangerous people and the court need to protect the society.”

8. Counsel for the 1st Accused did not urge a position on this aspect.

9. Counsel for the 2nd Accused responded emphasizing that –

“The court should take judicial notice that the complainant cannot have any regard to the accused person. She has said she has no grudge with them. During the proceedings and pre-trial, the complainant had caused 2nd accused to be jailed for 5 years. The complainant is a bitter person.... The issue of the assault was not litigated before this court. The accused persons especially the 2nd Accused cannot be condemned on the issue that he was not required to answer.

The authority of *Veronica Gitabi*

In *Veronica Gitabi*, the accused were police officers who misused their fire-arms and the court found that the *Witness Protection Act* had not been established and the complainant was advised to file a civil suit. The issue for an order of compensation is far-fetched.

The submission that the accused should not see outside the gates of prison to protect the society is faulty. Presentence report has taken the view of the society. The complainant is not the society!

The court can grant leniency in the matter. Urge the court to look at the present circumstances not the circumstances when the offence happened. All murder cases start with loss of life. Compensation should not be ordered. We pray for a way to rehabilitation for the accused, the complainant and the society at large.”

10. While conceding the viciousness of the assault on the deceased and his wife, the court does not consider the death sentence to be warranted in this case. The accused are of course subject to other penalties for the assault on the deceased’s wife without breach of the constitutional principle of *autrefois acquit*, *autrefois convict* (section 279 of *Criminal Procedure Code* and article 50 (2) (o) of *the Constitution*) as the offence of murder herein and the grievous harm charge on the deceased’s wife are separate based on different facts although carried out in the same transaction. The death sentence in accordance with the Supreme Court’s *Muruatetu* decision is still available, but it should, in the respectful view of this court, rather be preserved for compellingly aggravating cases where no other objective of penal treatment may be usefully served other than a final, retributive and deterrent sentence commensurate to the highest



level of revulsion of the society and debilitating impact on the family of the victim(s) and the society at large.

11. On the question of compensation, with respect, an issue of fair trial of the accused in that the injuries of the deceased's wife were never before this court and to uphold the fair hearing of the dispute in accordance with article 50 (1) of *the Constitution*, a civil suit for damages in compensation for the death of the deceased and or the injuries on he deceased's wife may, if so advised by the legal advisors of the deceased's family be sued upon.

Order for Compensation

12. In a proper case, sections 23, 24 and 25 of the *Victim Protection Act* expressly provides for an order for compensation as follows:

“

“23. Right to compensation

1. A victim has a right to restitution or compensation from the offender and the enforcement thereof in accordance with this Act.
2. Subject to any limitations and conditions set out in this Act, the victim has a right to compensation by the offender for —
 - a. economic loss occasioned by the offence;
 - b. loss of or damage to property;
 - c. loss of user over the property;
 - d. personal injury;
 - e. costs of any medical or psychological treatment; and
 - f. costs of necessary transportation and accommodation suffered or incurred as a result of an offence.
3. A victim has the right to restitution of any property or right to property of which the victim is deprived as a result of an offence in respect of which the victim is entitled to the rights and remedies specified in this Act.
4. A compensation order made against a convicted offender may be enforced as a judgment in civil proceedings.

24. Award of compensation by court

The court may award compensation under this Act and such compensation may include financial compensation for expenses incurred as a result of the loss or injury resulting from the offence complained of which shall be charged from the Fund.”

13. With respect, it is noteworthy that section 25 of the *Victim Protection Act* anticipates suitable civil proceedings and provides that under the Act is not part of the sentence, as follows:

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- “25. Compensation or restitution orders not part of a sentence
A compensation or restitution order made by a court against a convicted offender —
- a. is in addition to any other sentence or order the court may make against a person;
 - b. is not, for any purpose, to be taken to be part of a sentence passed against the person and;
 - c. is not a bar to civil proceedings.”
14. In this case, the matter of the extent of the injury of PW1 or the loss and damage of their property was not before the court for determination as a criminal or civil claim, and the court has not been served with adequate evidential material to be able to assess the suitable damages for the injury to PW1 the deceased’s wife or the deceased’s loss recoverable by his estate under the [Law Reform Act](#) to enable it make a judicious order. Let the family of the deceased, if so advised sue therefor as contemplated in section 25 (3) of the [Victim Protection Act](#). It is not a proper case for an order (not sentence) for payment of compensation against the accused. As in [Veronica Gitabi Case](#) it was not clear whether the Trust Fund for compensation under section 24 of the [Victim Protection Act](#) is operationalized.

Determination on the sentence

15. Having considered the heinous nature of the offence of murder and, on the evidence before this court, the circumstances of the killing involving accompanying violence and wanton assault, and subsequent attempted immolation on person of the wife of the deceased, for which the two accused were equally and jointly to blame, its impact on the family of the deceased and the prevalence of the offence of murder in the area, against the mitigating factors urged by the accused in their breadwinner roles and prison reform while awaiting this trial, the court finds the aggravating factors to trump the mitigating factors and considers a deterrent custodial sentence to be warranted, of course crediting the accused with the period of pre-trial detention.
16. Although, Counsel for the 2nd accused Mr. Atheru urged that the court should consider circumstances now prevailing – probably with the accused having benefitted from prison training programmes while in pre-trial detention – and not the circumstances at the commission of the offence, the court respectfully considers that both circumstances are material in determining the appropriate sentence. The circumstances at the commission of the offence serves to indicate the blameworthiness of the accused while the present circumstances offer mitigation in the present situation of the accused and by way among others, as urged here, of reformation of the accused in the intervening period. It may be that the accused have been reformed, or are in the process of reformation, into better persons but their conduct and purpose at the time of the offence in assaulting the deceased and his wife by cutting them up with a panga and burning them up leading to the death of the deceased and his wife escaping with serious burn injury calls for a severe sentence as for deterrent to others of like mind, apart from its retributive merit on the accused themselves. The Court considers a sentence of imprisonment for fifty (50) years to meets the justice of the case.

Orders

17. Accordingly, for the reasons set out above, the court sentences the accused persons, Silas Mukira and Stanley Thiaine, each to serve an imprisonment term of fifty (50) years for the offence of murder contrary to section 203 as read with 204 of the [Penal Code](#).



18. The sentence shall commence for Both the 1st and 2nd accused on 20/6/2018 to take into account the period of pre-trial detention awaiting conclusion of the trial after cancellation of Bail and take into account the period of three months between plea in July 2016 and October 2016 when they were granted bail.

Order accordingly.

DATED AND DELIVERED ON THIS 16TH DAY OF AUGUST, 2023.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr, Masila for the DPP.

Ms. Kiyuki for Mr. Muthomi for 1st Accused.

Mr. Atheru for 2nd Accused.

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