



**Republic v Nchebere & another (Criminal Case 8 of 2016)  
[2023] KEHC 21512 (KLR) (16 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21512 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE 8 OF 2016  
EM MURIITHI, J  
AUGUST 16, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**DANIEL KARITHI NCHEBERE ..... 1<sup>ST</sup> ACCUSED**

**SAMWEL KINYUA NCHEBERE ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. The accused were convicted for murder c/s 203 as read with 203 of the *Penal Code*.
2. In principle the accused by Mitigation filed on April 27, 2023 relying on The *Judiciary’s Sentencing Policy Guidelines* urged the court to consider “sentence impact on the society. Its impact on the family and the entire justice system. The sentencing policy must promote restorative justice and values of rehabilitation. This is in line with our correction service of rehabilitation.” Relying on the Supreme Court’s *Francis Kariokor Muruatetu & Another v R* (2017) eKLR, which outlawed death sentence as a n mandatory sentence and upheld the discretion of the court in sentencing for murder to allow consideration of the mitigating and aggravating factors, they urged that the mitigating factors in their case outweighed the aggravating factors in the circumstances of this case and, pointing out that they had been in custody for 7 years 4 months since the time of their arrest, the y prayed for a non-custodial sentence.
3. The mitigating facts set up by the accused were as follows:  
 1<sup>st</sup> Accused, 39 years  
 “The accused comes from a very humble background and is married to one wife with whom they have five children. He was a breadwinner in the family at eh time of his arrest. Currently, two of his children were in High School, the other three in primary level. That upon his incarceration, his wife deserted



the children and leaving them with my first born brother, but unfortunately he passed away in the year 2022, my father also assistin them paralyzed on both legs, now the children are under the care of their grandmother who is now 77 years old. His wife having left the grandmother with the sole burden of taking care of the children something that has taken a toll on her both physically and mentally.”

2<sup>nd</sup> Accused, 37 years

“The accused comes from a very humble background and is married to one wife with whom they have four children. He was the breadwinner in the family at the time of his arrest. Currently, two of his children are in High School, the other two are in primary level.

That upon his incarceration, his wife deserted the children and leaving hem with my first born brother, but unfortunately he passed away in the year 2022, my father who was also assisting them paralyzed on both legs, now the children were in he care of their grandmother who is now 77 years old. His wife having left the grandmother with the sole burden of taking care of the children something that has taken a toll on her both physically and mentally.”

4. Both accused claimed to have participated while in prison in several Christian based reformation programmes. Counsel for the accused did not make any separate submissions and he relied on the written submissions filed by the accused.
5. Counsel for the DPP submitted as follows:

“The accused are first offenders the presentence report is not favourable. It recommends a custodial sentence. I urge the court to consider that an innocent life was lost. Judicial notice should also be taken of what is happening in this County. There are many murder cases in the County and the court needs to pass a message that it shall not be tolerated.

The only way it can be done is through a custodial sentence. The accused being remorseful or having undergone different courses in custody is not enough taking into consideration that they were innocent until they were convicted. Proper rehabilitation starts now. The aggravating circumstances outweigh the mitigating circumstances. The victims of the heinous crime are suffering. They lost a father who was a breadwinner. I urge the court to mete out a custodial sentence.”

6. As established in the judgement of this court, the two accused killed the deceased .... The Probation Officers pre-sentence report gives the victim impact statement and recommends as follows:

1<sup>st</sup> accused - Daniel Kareithi Nchebere

“The offender and the victim are strangers and had no relationship. Social inquiry revealed the two parties did not have any quarrel with each other.

He is a father of five and was solely responsible for his child’s upbringing prior to his arrest. The offender also takes care of his siblings’ children who were under the care of his deceased mother.

The family members were open to having him back home claiming that the offender is a good person who is industrious and supports most of them financially. It is their contention that the offender has no evil bone in his body hence they pray he be considered for leniency during sentencing.



The offender does not own up to the offence and is still insistent on his innocence and that he was simply implicated. Locals in his home area are of the view that the offender is privy to what transpired and led to the death of the victim in this matter.

The deceased family is indifferent to the kind of sentence that ought to be meted on the offender for their loved one is gone forever and nothing can change that. They reported that they would have appreciated some sort of compensation to aid in raising the deceased children.

The local administration had a positive opinion of the offender whereby they reported that before this arrest he was a law-abiding individual who bothered no one. However, the area chief who aided in the arrest of the offenders reported that according to local sentiments and opinions the two offenders are not innocent as they claim. They played part in the death of the deceased person in one way or another.”

#### Recommendations

“From the observations drawn above it is my considered opinion that the accused person is unfit for a non-custodial sentence.”

Report prepared by

Lewis Mutuma Kimathi

Probation Officer

Tigania

Date: May 11, 2023

2<sup>nd</sup> accused – Samuel Kinyua Nchebere

“The offender and the victim are strangers and had no relationship. Social inquiry revealed the two parties did not have any quarrel with each other.

He is a father of four children who are currently under the care of the paternal grandmother for their mother deserted them after the offender’s arrest.

The family members (brothers and sisters) were open to having him back home claiming that the offender is a good person who is self-sufficient. They feel that the burden of raising his children weighs heavy on his aging mother and them too.

The accused person does not own up to offence and blames his arrest on a land dispute claiming that some villagers blamed the offence on him to get rid of him so that they could possess his land.

The local administration had a negative opinion of the offender, the area chief reports that the offender has been associated with anti-social behavior previously. They report that he is an individual whose criminal history was leading to the current predicament he finds himself in. The community feels that the home environment is not conducive for his rehabilitation for he is an obstinate individual who listens to no one.”



## Recommendation

“From the observation drawn above it is my considered opinion that the accused person is unfit for a non-custodial sentence.”

Report prepared by

Lewis Mutuma Kimathi

Probation Officer

Tigania

Date: May 11, 2023

7. Having considered the heinous nature of the offence murder, for which the two accused were equally and jointly to blame, its impact on the family of the deceased and the prevalence of this kind of killings in the areas against the mitigating factors of the youthful age of the accused brothers, their first offender and breadwinner roles, although they have been in custody for over seven years and acquired some reformatory training, and the negative pre-sentence Probation Officer's report the court determines that a deterrent custodial sentence is warranted in this case, save that such imprisonment term shall, in accordance with section 333 (2) of the *Criminal Procedure Code*, take into account the long period of pre-trial detention while awaiting the conclusion of the case. The court considers an imprisonment term of twenty-five (25) years to meet the justice of the case.

## Orders

8. Accordingly for the reasons set out above, the court sentences the accused persons, Daniel Karithi Nchebere And Samwel Kinyua Nchebere to serve an imprisonment term of twenty-five (25) years for the offence of murder contrary to section 203 as read with 204 of the *Penal Code*.
9. The sentence shall commence on January 15, 2016 to take into account the period of pre-trial detention awaiting conclusion of the trial.
10. Order accordingly.

**DATED AND DELIVERED ON THIS 16<sup>TH</sup> DAY OF AUGUST, 2023.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

**MR. MASILA FOR THE DPP.**

**MR. IGWETA FOR THE ACCUSED.**

