



**Republic v Aluke (Criminal Case 30 of 2013)  
[2023] KEHC 23015 (KLR) (29 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 23015 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE 30 OF 2013  
SC CHIRCHIR, J  
SEPTEMBER 29, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**FESTO MUKOLWE ALUKE ..... ACCUSED**

**RULING**

1. The Accused herein was convicted of murder by Justice Musyoka on April 28, 2023. It has come before me for purposes of sentencing only. A presentencing report was prepared and each party made their respective submissions orally.

**Accused’s Submissions**

2. In mitigation, though his counsel Mr Shifwoka, the Accused told the court that he was remorseful and that he regrets his actions; that he has lost his family as a result of his incarceration as his wife and children left; and that he has an elderly parent for whom he is responsible for.
3. The Accused further submits that he has learnt a lot of lessons while in custody. He pleads for leniency, so that he can have the opportunity to put into practice the said lessons.
4. He further points out that as can be seen from the presentencing report, his background has had a negative influence on his life. He expresses regret that so much of his prime life has been spent in incarceration and that any further incarceration may deny him the opportunity for rehabilitation and restoration back to community.

**Prosecution’s submission**

5. Ms Osoro for D P P urged the court to take into consideration the fact as a matter of cultural practice amongst the luhya community, the accused is no longer welcomed back in the community.



6. She further submits that while in remand, the accused was not paying for his crimes but now he needs to.
7. The court was also informed that there were no previous criminal records on the accused.

### **Pre-sentencing report**

8. According to the probation officer, the Accused is a first offender, but has a history of general defiance, and stealing. The community and his own family do not want him back in the community. He reports that the Accused however expressed remorse and attributed his actions to Alcohol consumption.

### **Determination**

9. I have considered the parties' submissions as well as the probation officer's report. The Accused person is a first offender; he is also remorseful and these two considerations are mitigating factors.
10. However, I have equally considered the fact that the victim was an elderly person of 70 years, he was eating his midday meal when he was viciously attacked. He died on the spot. Targeting the elderly as it happened in this case is an aggravating factor. ( see paragraph 23.7.7 of the sentencing policy guidelines)
11. The circumstances of the offence also reflect the defiance which the probation officer identified and also a person who has no respect for human life. From the evidence, he carried out the murder, in a matter -of -fact way. This is a summary of how the murder was committed: he borrowed a panga from a neighbour ( a per s PW3); puts it in a sack ( as PW2); went straight to where the victim was; cuts him three times on the head; goes back and throws the blood-stained knife in PW3's compound and heads straight to the police station to report himself. It is as though he was getting rid of some petty nuisance, not human life.
12. It is a kind of conduct that must be deterred. The Accused also needs to spend time away from the community, as he ponders over the consequences of his unbridled anger, which according to the probation officer, the Accused admitted to.
13. Taking both the mitigating and aggravating factors as aforesaid, I hereby sentence the Accused to 40 years in prison. The sentence will run from June 14, 2013 being the date he was first arraigned in court.
14. Right of Appeal 14 days.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 29TH DAY OF SEPTEMBER 2023.**

**S.CHIRCHIR.**

**JUDGE**

