



**Republic v Ndiangui (Criminal Case 17 of 2017)
[2023] KEHC 24783 (KLR) (30 October 2023) (Sentence)**

Neutral citation: [2023] KEHC 24783 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL CASE 17 OF 2017
RM MWONGO, J
OCTOBER 30, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

JUSTUS MWANGI NDIANGUI ACCUSED

SENTENCE

1. The Accused, an Administration Policeman, was charged and convicted for the offence of Murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence were that on the 2nd day of August, 2017, at Sub- County Commissioner's Office at Engineer Township in Nyandarua Sub County, Nyandarua County he murdered Administration Police Officer Solomon Wainaina.
2. The court found that the offender had shot at his colleague out of anger on suspicion that the colleague was having an affair with his wife; and that the colleague even taunted him saying that he could snatch her away. He used a semi-automatic rifle and fired many bullets at the deceased. The Post mortem report showed that there were nine bullet entry points at the head, back, occipital area, shoulders and lower chest.
3. Following the conviction, the accused filed mitigation submissions, and a Probation Officer's Pre-sentence report was also filed.
4. In his mitigation, the offender stated: that he is a first offender; that he had no history of being in conflict with the law; that he has been free of any wrongdoing whilst in custody; that he is remorseful; that he seeks forgiveness from the victim's family; that he is capable of reform and seeks an avenue that will aid him in reforming; that he lived harmoniously with the community; and that he is self-effacing and humble and non-confrontational as seen in his demeanour in court, and that, based on the Supreme



Court decision of *Francis Karioko Muruatetu & another v Republic* [2017] eKLR, he seeks a non-custodial sentence.

5. The Probation Report dated April 27, 2023, indicates that the offender is aged 38 years and from Nyeri County; that he is the third born of five siblings; that he has good social ties with the family which has no record of crime; that he had a mean grade of C in his Primary education; that he is married with two children; that he was recruited into the AP Service in 2000; and that in the past he had abused alcohol and bhang which led to mental instability and admission into Mathari Hospital for detoxification and treatment.
6. Further the Report indicates that the offender was apologetic and blamed his anger and provocation for the incident; that his father passed on whilst he was in custody, and he was unable to attend the funeral; and that his family would be willing to receive him at home if given a non-custodial sentence.
7. From the Report, the AP Police Unit Commandant for Nyandarua called for justice for the slain officer, and urged the court to set a lesson for other officers of the disciplined forces, as the unit does not condone crimes of any nature.
8. According to the Report, the victim's family considers that they were brutally deprived of their son; that the mother was left with a heavy socio-economic burden of taking care of the late son's wife and child; and that they seek the maximum sentence. The Report notes, and recommends, that the offender as a Police Officer must know as follows:

“His [the offender's] action was certainly unlawful. Despite his submissions that the deceased had an illicit love affair with his wife, his prompt and heinous actions necessitate a penalty as law provides.

Socially, the offender was a renowned alcoholic, drug user and violent when intoxicated.

Bearing in mind the gravity of the offence herein, he is not suitable for our non-custodial programs”

9. The applicable law on sentence for the offence of murder is found under the provisions of section 204 of the *Penal Code* which provides:

“Any person convicted of murder shall be sentenced to death.”

The section provides for the sentence of death.

10. The Supreme Court decision in the *Francis Karioko Muruatetu* held that in sentencing, a court should take into account the mitigating circumstances before sentencing, and that the following matters should guide the court:

“In sentencing the court will consider mitigating factors such as the following;

- 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. The manner in which the offence was committed on the victim;



- g. The physical and psychological effect of the offence on the victim's family;
 - h. Remorsefulness of the offender;
 - i. The possibility of reform and social re-adaptation of the offender;
 - j. Any other factor that the Court considers relevant.
11. In *Muruatetu*, the Supreme Court did find the mandatory death sentence to be unconstitutional. It also found that it was unconstitutional for an accused person to be deprived by legislation of the right to have his mitigation taken into account at the time the court is meting judgment. In other words, the mandatory nature of the death sentence, by depriving a court the capacity to consider mitigation, was unconstitutional.
12. In light of the foregoing, this court can mete a sentence that is not the death sentence according as the mitigating circumstances may indicate.
13. I have taken into consideration the accused's mitigation, the above sentencing guidelines and the Probation Report that recommends that the accused is not suitable for a non-custodial sentence. I have also taken into account that the accused has been in prison for the last six (6) years; and the nature of the incident which was a shooting by an armed police officer of another in anger, after stalking him whilst on sentry duty.

Conclusion

14. Taking all these into considerations, I sentence the accused to twenty-four (24) years imprisonment commencing from the first date of incarceration.
15. I also take into account that under the *Prison Act*, the accused would be entitled to remission of one third (1/3) of his sentence which would leave a balance of 16 years of the sentence term. From the balance of the term, the accused has served six (6) years, leaving a balance after remission of ten (10) years.
16. I further direct that during his term in prison, the offender shall be facilitated to undertake a programme of guidance and counselling in anger management to enable him to fit into normal society.
17. Orders accordingly.

DATED AND SIGNED IN KERUGOYA THIS 30TH DAY OF OCTOBER, 2023

R. MWONGO

JUDGE

Delivered Virtually in the presence of:

State Counsel - Ndiema

Wairegi for accused

Accused - Present in Court

Quinter - Court Assistant

