



**Director of Public Prosecution v Barasa (Criminal Case 23 of 2019)
[2023] KEHC 25977 (KLR) (30 November 2023) (Sentence)**

Neutral citation: [2023] KEHC 25977 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 23 OF 2019
SC CHIRCHIR, J
NOVEMBER 30, 2023**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION REPUBLIC

AND

LUKA EZEKIEL BARASA ALIAS SIPWECHHE ACCUSED

SENTENCE

1. The Accused herein was convicted of the murder of Isaac Barasa by J. Musyoka . The matter was then referred for pre-sentencing assessment of the accused by the Probation Officer . The sentencing hearing was conducted on 26th September 2023n

Pre-Sentencing Report

2. On the highlights, the accused is reported to have had a history of truancy from an early age, bang use and smoking. He is described as violent and defiant. At extended family level, bitterness still lingers as the victim was the Accused’s paternal uncle. The community attitude is hostile towards the accused.
3. The accused in his mitigation submits that he is remorseful, a first offender and the period in remand has given him time to evaluate his action. He prays for a chance to mend his ways.

Prosecution’s Submission

4. The prosecutor has prayed for custodial sentence. She submits that the Accused ‘s life has been characterized by defiance fom very early age and his conduct needs deterrence. The prosecution has called for sentence that is in strict compliance with the provisions of the law.
5. I have considered the assessment report, the accused’s mitigation and also submissions by the state.



6. The accused is a first offender and remorseful. These factors are mitigating on the sentence. However, the history of long-standing lawlessness on the part of the accused, calls for deterrence and a chance to reform while in, and not outside of prison.
7. Further, it must be remembered that a person's right to life was cut short in an act of vicious violence on the part of the accused.
8. The offence of murder attracts death penalty. But since the decisions in *Francis Muruatetu & another v Republic* (2017) eKLR, the courts now have a leeway to consider accused's mitigation, and to determine if the accused's mitigation entitles him a lesser sentence than that which is prescribed for murder. Thus, it is no longer mandatory to pass the sentence of death for the offence of murder.
9. In the light of the foregoing mitigation and aggravating factors, I hereby sentence the accused to 30 years in prison. The sentence will run from 25.4.2019 being the date when he was first arraigned in court.
10. Right of Appeal, 14 days

DATED, SIGNED AND DELIVERED IN OPEN COURT ON 30TH DAY OF NOVEMBER, 2023

S. CHIRCHIR

JUDGE

in the presence of:-

Court Assistant - Erick

Accused present

No appearance by the state

