



Republic v Mutai (Criminal Case 18 of 2017) [2022] KEHC 3367 (KLR) (20 May 2022) (Sentence)

Neutral citation: [2022] KEHC 3367 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE 18 OF 2017**

AN ONGERI, J

MAY 20, 2022

BETWEEN

REPUBLIC PROSECUTION

AND

RICHARD KIPROTICH MUTAI ACCUSED

SENTENCE

1. The Accused Person was convicted with the charge of Murder Contrary to section 203 as read with section 204 of the *Penal Code*.
2. The particulars of the charge were that on 16/7/2017 at Kabianga Market in Kabianga Division within Kericho County, the Accused Person murdered Erick Kipkemoi Ngetich.
3. The Accused Person pleaded not guilty to the charge and after a full trial, the Court found him guilty as charged and convicted him accordingly.
4. The Learned Counsel for the Accused Person in his mitigation said that the Accused Person is an unmarried young person aged 34 years and further that he is a first offender.
5. The defence Counsel further submitted that the Accused Person is remorseful and apologetic for the offence he committed.
6. It was also submitted that the Accused Person did not intend to kill the deceased as he was protecting his Employer's property and he thought the deceased was a thief.
7. It was further submitted that the Accused Person has reflected on the heinous crime he committed and he has surrendered his life to God and he has asked for forgiveness and embraced Christianity.
8. He also said he was under the influence of alcohol at the time he committed the offence and he undertakes not to commit the offence again in his life time.



9. The Probation Officer filed a Pre-Sentence Report on 8/5/2022 detailing the social background of the Accused Person.
10. The Report stated that the Accused Person attended Kabweria Primary School upto Class 8 and he scored 215 Marks but did not proceed to Secondary School due to poverty.
11. The Report further stated that the offender was working as a watchman with Wilcorse Security Company at the time of the commission of the offence.
12. The Probation Officer was not able to contact the family of the deceased since the deceased hailed from Bomet County while the Accused Person comes from Koiywa in Kericho County.
13. I have considered the Mitigating circumstances in this case especially the fact that the Accused Person is remorseful for the offence he committed.
14. The offence of Murder is a very serious one and the law prescribes a death penalty.
15. The case of *Francis Karioko Muruatetu v Republic*(2017) eKLR the Supreme Court held that the mandatory nature of the death sentence as provided under section 204 of the *Penal Code* is unconstitutional.
16. The Supreme Court did not outlaw the death penalty, rather it made a finding that the mandatory nature of the death sentence is unconstitutional. The Supreme Court held as follows; “Consequently, we find that section 204 of the *Penal Code* is inconsistent with *the Constitution* and invalid to the extent that it provides for the mandatory death sentence for murder. For the avoidance of doubt, this decision does not outlaw the death penalty, which is still applicable as a discretionary maximum punishment.”
17. Following the decision and policy directions rendered by the Supreme Court in the Muruatetu case, the death penalty was not abolished but is reserved for deserving cases.
18. In the case of *Republic v Ruth Wanjiku Kamande* [2018] eKLR Lesiit J. sentenced the accused person to death and stated as follows; “In terms of sentence, the sentence for murder is the death penalty. It is true that pursuant to *Muruatetu case, supra* the courts now can exercise discretion when considering and passing sentence. It is important to say that in my view that discretion to pass a sentence other than death in capital offences should only be exercised in the deserving cases”
19. I find that this is appropriate case for the death penalty as the Accused Person inflicted fatal injuries on an innocent man without provocation or reason.
20. The Accused Person’s mitigation that he was under the influence of alcohol is an afterthought as the same was not raised during the trial.
21. There were two eye witnesses who said they tried to stop the Accused Person from assaulting the deceased to no avail.
22. The Accused Person has no regard for the sanctity of human life.
23. I accordingly sentence the Accused Person to suffer death as by law required.
24. He has a right of Appeal to the Court of Appeal within 14 days of this date.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 20TH DAY OF MAY, 2022

A. N. ONGERI

JUDGE

