



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Silamoi (Criminal Case E003 of 2021)
[2022] KEHC 14984 (KLR) (28 July 2022) (Sentence)**

Neutral citation: [2022] KEHC 14984 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
CRIMINAL CASE E003 OF 2021
RN NYAKUNDI, J
JULY 28, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

SAMSON KIMUTAI SILAMOI ACCUSED

SENTENCE

1. The convict was initially charged with the offence of murder contrary to section 203 as read with section 204 of the *penal code*. However, in the course the defence entered into a plea bargaining agreement with the state reducing the offence to that of manslaughter contrary to section 202 as read with section 205 of the *penal code*. Having admitted the facts of the case as deduced from the plea bargaining agreement it was the singular duty of this court to navigate the terrain of sentencing. Implicit to the law the supreme court in *Murutetu* one laid down the following factors to be considered for determining the quantum of sentence.
 - i. nature and gravity of offence
 - ii. penalty provided for the offence
 - iii. manner of commission of offence
 - iv. proportionality between crime & punishment
 - v. age and sex of the offender page 3 of 25
 - vi. character of the offender
 - vii. antecedents (criminal history etc.)
 - viii. possibility of reforms



- ix. impact of offence on social order and public interest
- x. The personality of the offender as revealed by his age, character, antecedents and other circumstances and the traceability of the offender to reform must necessarily play the most prominent role in determining the sentence. A judge has to balance the personality of the offender with the circumstances, situations and the reactions and choose the appropriate sentence to be imposed. See...
 - (i) *Susbil Murmu Vs. State of Jharkhand*, (2004) 2 SCC 338
 - (ii) *Surjit Singh Vs. Nahar Ram*, (2004) 6 SCC 513

2. What the principles tend to personify is awarding inadequate sentence for the offence is illegal. That therefore calls for both trials and appeals court not to extend undue sympathy to the convict in awarding a fair and proportionate sentence. Discretion in sentencing should be exercised in a justified manner grounded on the current jurisprudence and statutory scheme on punishment. From the facts of this case the consequences of the right to life under article 26 of the constitution did not fall on any of the recognized exceptions. In the same vent aggravating factors outweigh mitigation offered by the convict. It is for this reason I sentence the convict to eighteen (18) years custodial sentence with effect from September 18, 2014.

14 days right of appeal.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 28TH DAY OF JULY, 2022.

.....

R. NYAKUNDI

JUDGE

(mark.mugun@gmail.com)

In the presence of:-

- 1. Mr Mugun for DPP
- 2. Appellant

