



**Republic v Susan Knightkuba (Criminal Case 28 of 2016)  
[2022] KEHC 14904 (KLR) (Crim) (26 October 2022) (Sentence)**

Neutral citation: [2022] KEHC 14904 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL  
CRIMINAL CASE 28 OF 2016**

**JM BWONWONG'A, J**

**OCTOBER 26, 2022**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**SUSAN KNIGHTKUBA ..... ACCUSED**

**SENTENCE**

1. The accused was convicted of murder by this court on 30<sup>th</sup> March 2022 following her full trial on a charge of murder.

**Mitigating circumstances**

2. Mr. Mutitu, counsel for the accused mitigated on behalf of the accused. He informed the court that the accused is a mother of three school going children. These children are now taken care of by the aged parents of the accused. Additionally, he informed the court that the accused is remorseful.

**Aggravating circumstances**

3. Ms. Maina for the Republic urged the court to consider the following factors.
4. The accused is a first offender. She is not remorseful according to the probation officer's report. The deceased was a mother of three children. The victims are apprehensive and are requesting for a non-custodial sentence to be imposed; since she is a dangerous and skilled criminal. She has therefore urged the court to impose an appropriate custodial sentence in view of the circumstances of the offence.
5. Furthermore, counsel has urged the court to consider the intricate planning and execution of the murder of the deceased.



6. I have considered the foregoing matters. I find that the accused is not remorseful. I further find that the murder of the deceased was brutal and painful. Additionally, I find that the accused has orphaned the two children of the deceased; who now will grow up as orphans.
7. On the other hand, I find that the accused was a first offender. I also find that she has been in pre-trial custody for a period of about five years and nine months (from April 2016 to 30<sup>th</sup> March 2022).
8. For reasons that will appear below in this judgement, I reject the prosecutor's call for a custodial sentence.
9. After considering the foregoing matters, I hereby sentence the accused to sixteen years imprisonment.
10. I find that it is not proper for the prosecutor to urge the court to impose a custodial sentence. The High Court in *Shiani v Republic* [1972] EA 557 held that it is not the function of the prosecutor to tell the court of its views about the sentence and that the court pronounced itself as follows in that regard: -

“The conviction cannot be sustained. But we will yet say something about the matter of sentence. The prosecutor told the magistrate that the matter was serious though whether he was referring to it generally or to the facts of case, he did not make clear. Either way, the comment should not have been made. It is not the function of a prosecutor, as this court has more than once said, to tell the court his views. He is required simply to put the facts before the court. The court must decide how it views the case. In this case, perhaps taking his lead from the prosecutor, the magistrate not only that he took a very serious view of the case but that it, “by all means calls for a deterrent sentence”. We are quite unable to subscribe to that; the public at large was not likely to start making its own weighing and measuring machines. But beyond that, there was a most serious misdirection on the on the part of the magistrate for he said that the appellant “has been no doubt exploiting the innocent and poor people of that area for a considerable period”, when no-one, not even the prosecutor, suggested that it was so. As a matter of fact, as no-one said what the stones weighed, the appellant may have been “exploiting” himself.”

11. The foregoing is exactly what the prosecutor was telling this court to do in urging the court to impose a custodial sentence.
12. The reason why a prosecutor is forbidden to tell the court of its views is because our system of trial is adversarial. Additionally, the prosecutor cannot in law even recommend the type of sentence to be imposed by the court.
13. I am aware that in countries whose system is based on the civil law such as France, a prosecutor is allowed to recommend to the court the sentence to be imposed; which is unheard of this country.
14. However, it is proper for the prosecutor to urge the court to consider the aggravating factors and other relevant circumstances of the case.
15. It is for the court to find the appropriate sentence to be imposed based on the circumstances of the case.

**JUDGEMENT SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 26TH OF OCTOBER 2022.**

**J M BWONWONG'A**

**JUDGE**

In the presence of-



Mr. Kinyua court assistant  
Mr Wakaba for the accused  
Ms Maina for the Republic

