



**Republic v Lihavi & another (Criminal Case 37 of 2019)
[2025] KEHC 401 (KLR) (23 January 2025) (Sentence)**

Neutral citation: [2025] KEHC 401 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 37 OF 2019
SC CHIRCHIR, J
JANUARY 23, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

FAISTINE LIHAVI 1ST ACCUSED

ERICK MAYUBU 2ND ACCUSED

SENTENCE

1. The Accused persons herein were convicted of Murder. In mitigation, the 1st Accused told the court that she has been in custody since she was arrested on 1st July, 2019. She further states that she is remorseful and prays for leniency; that she has 5 children who she need to take care of. She prays for a non- custodial Sentence.
2. The 2nd Accused told the court that he has been in custody since the date of arrest. He further states that he is 37 years old and still a productive member of the society. That he regrets the incident and prays for leniency. He urges the court to consider that the children will be abandoned, if both parents go to jail.
3. The 2nd Accused further submits that despite the adverse report about his conduct, from the community, as recorded in the social inquiry report, he argues that Sentencing is at the discretion of the trial court; that such reports are persuasive but not binding on the court. He prays for non-custodial sentence.
4. On behalf of the state, Ms Osoro submits that the circumstances of the offence show that, the 1st Accused was the motive behind the killing of the deceased, as it was established that she had a love affair with the deceased, which offended the 1st Accused.
5. It is further submitted that both Accused persons have been in custody since the year 2018 and therefore the 1st Accused has not been taking care of the children in any event .



6. On the circumstances of the offence, the prosecutor submits that the accused persons did not give the deceased a chance of survival as they tied his hands and threw him into a raging river. She urged the court to pass a sentence that would speak to the sanctity of life.
7. I have considered the respective submissions. Both Accused persons have expressed remorse. There was also no mention of them being repeat offenders. I will therefore treat each of them as a first offender. Remorse and being first offender are mitigating factors.
8. I have anxiously considered the fact that the Accused persons were a married couple, though estranged at the time, and between them are two children whose ages are not disclosed. The 1st Accused also has 3 children from her first relationship aged about 15 years and above. I am alive to the fact the parents' incarceration will adversely affect the children socially and economically. I have taken this into consideration.
9. On the aggravating side, I have considered the circumstances of the offence including the "punishment" administered on the deceased vis-à-vis the alleged crime.
10. There were other ways of punishing the offender other than killing him. The killing for the "offence" was a reflection of a complete disregard to the dignity and sanctity of human life. The message that needs to go to the Accused, and others bend on taking human life so casually, is that human life is sacred and cannot simply be taken away at the whims of those who offended , one way or another.
11. Further , the throwing of the body in River Yala, was an attempt to conceal the crime. An attempt to conceal a crime is an aggravating factor.
12. In view of all the above considerations , I hereby sentence each of the Accused persons to 20 years in prison. The sentence is deemed to have taken effect from 26/6/2019 being the date when they were first arraigned in court.
13. Right of Appeal:- 14 days.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 23RD DAY OF JANUARY, 2025.

S. CHIRCHIR

JUDGE.

In the Presence of:-

