



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Gichue (Criminal Case 31 of 2019)
[2025] KEHC 247 (KLR) (22 January 2025) (Sentence)**

Neutral citation: [2025] KEHC 247 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 31 OF 2019
HI ONG'UDI, J
JANUARY 22, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

BENSON MUCHIRI GICHUE ACCUSED

SENTENCE

1. Benson Muchiri Gichue was on November 23, 2023 convicted of the offence of Murder contrary to section 203 as read with section 204 of the *Penal Code*. The trial court (Chemitei J) ordered that the matter be mentioned before this court for directions on sentencing on November 29, 2023. The accused did not show up. His advocate then, Mr. Ikuu informed the court that the accused had a doctor's appointment, hence his appointment.
2. The matter was further fixed for mention on 14th December, 2023, 22nd January, 2024 and the accused and his advocate never turned up in court but the surety was present. A lady called Mary Njoki presented to court an alleged treatment document of the accused. This was on 22nd January, 2024. The prosecution was directed to do a follow up on the genuinity of the said document. A further mention was fixed for 4th March, 2024.
3. On 29th January, 2024 the accused was brought to court under arrest by the police and was in the cells awaiting appearance before the court. He was however suddenly taken ill and rushed to Nairobi Women's Hospital. The court was later informed by the prosecutor Mr. Konga that the accused had been taken to Nakuru PGH and was likely to be admitted due to high blood pressure.
4. The surety who was present in court sought to be discharged, since he had availed the accused and the request was granted by the court. The matter was then fixed for mention on 26th February, 2024. The court was however notified by Mr. Konga for the prosecution that the accused escaped from



- the Hospital and his whereabouts were unknown. A warrant of arrest was issued by the court and a mention set for 14th February, 2024.
5. Several mentions were done with Police Station heads appearing before the court to explain the progress of the execution of the warrant of arrest. The accused was presented before the court on 9th July, 2024 under arrest. He was then remanded in custody to await his charges with the offence of “unlawful escape”, and the sentencing in this case. The accused’s former advocate ceased acting for him and he had to engage another counsel.
 6. A pre-sentencing report dated November 27, 2024 was filed by Mr. Salim Assumani a probation officer. The report recommended reconciliation of the two families for purposes of taking care of the deceased’s children and mother.
 7. Mr. Matoke for the accused submitted in mitigation stating that him and the accused associated themselves with the pre-sentencing report. That the accused who had been in custody for six (6) months had reformed. Counsel submitted that the accused was remorseful for the escape incident due to bad advice. Further that the accused is a family man whose family was suffering. He was ready to support the deceased’s family by paying fees for the children and even a medical cover. That the two families were talking.
 8. With the court’s permission the accused addressed the court saying he was sorry for disappearing when he was required in court saying his former advocate had put a lot of fear in him.
 9. Counsel Okok for the prosecution submitted that the deceased was the accused’s watchman whom he accused of theft. That it could be true that the deceased stole but the accused should not have taken the law in his hands. He ought to have reported the matter to the police. On the pre-sentencing report she submitted that though it was favourable the same is not binding on the court. She pointed out the sanctity of life which must be protected at all costs. She urged the court to take into account the accused’s escape from lawful custody after conviction and his arrest after four (4) months. She proposed a sentence of twenty (20) years imprisonment.
 10. I have carefully considered the circumstances of this case, the mitigation of the accused and the response by counsel for the prosecution. The accused was convicted of a charge of murder which carries a maximum death sentence. First of all, what the accused did to the deceased who was his worker was very inhuman. Secondly his conduct after conviction tells a lot. He did not appear in court as directed by the court after his conviction. Warrants of arrest had to be issued against him. He was only arrested and arraigned in court on 9th July, 2024.
 11. I have taken note of the pre-sentencing report by the probation officer and the proposals of reconciliation and mediation. This offence took place on 11th July, 2019.
 12. Plea was taken on 7th August, 2019 and accused was released on bond on 17th September, 2019. There is no evidence of any efforts made by the accused person while on bond to support the deceased’s widow and children. He has never paid any fees for these children from 2019 when he killed their father to date. Is it now that he is awaiting sentence that it has occurred to him that he should do what the pre-sentencing report purports to show?
 13. The accused’s conduct upon conviction is not the conduct of a remorseful person. For the above reasons, I find the proposal for a non-custodial sentence to be undeserving. What the accused did to his workman was so inhuman and he must suffer for it.



Order

14. Accused is sentenced to eighteen (18) years imprisonment from July 9, 2024 when he was arraigned in court after the execution of the warrant of arrest. Right of Appeal explained.

15. Orders accordingly

DELIVERED, DATED AND SIGNED THIS 22ND DAY OF JANUARY, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

