



**Republic v Mwebi (Criminal Case 48 of 2018)
[2025] KEHC 141 (KLR) (13 January 2025) (Sentence)**

Neutral citation: [2025] KEHC 141 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL CASE 48 OF 2018
GL NZIOKA, J
JANUARY 13, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOSEPH NYANYUKI MWEBI ACCUSED

SENTENCE

1. The sentence herein is delivered pursuant to the judgment delivered herein on August 21, 2024, wherein the accused was found guilty and convicted of the offence of manslaughter contrary to contrary to section 202 as read with section 205 of the *Penal Code* (Cap 63) Laws of Kenya.
2. Sentencing is central task of administration of justice by a court of law. In that regard clause 4.6.1 of the *Sentencing Guidelines* (2023) provide inter alia that; the sentencing process forms part of the trial and is therefore subject to the fair hearing constitutional guarantees.
3. In that regard, the Supreme Court of India in the case of, *Antony Pereira v State of Maharashtra* (2 AIR 2012 SC 3802) held that stated that
 - “70. Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done.
4. Similarly, the Supreme Court of Kenya in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR stated that: -
 - “(41) It is evident that the trial process does not stop at convicting the accused. There is no doubt in our minds that sentencing is a crucial component of a trial. It is



during sentencing that the court hears submissions that impact on sentencing. This necessarily means that the principle of fair trial must be accorded to the sentencing stage too.

5. In addition, the Supreme Court of Kenya gave guidelines to the Courts to consider in re-sentencing offenders which are also applicable to sentencing of an accused convicted of the offence of murder as follows: -

“(71) As a consequence of this decision, paragraph 6.4-6.7 of the guidelines are no longer applicable. To avoid a lacuna, the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

- (a) age of the offender;
- (b) being a first offender;
- (c) whether the offender pleaded guilty;
- (d) character and record of the offender;
- (e) commission of the offence in response to gender-based violence;
- (f) remorsefulness of the offender;
- (g) the possibility of reform and social re-adaptation of the offender;
- (h) any other factor that the Court considers relevant.

(72) We wish to make it very clear that these guidelines in no way replace judicial discretion. They are advisory and not mandatory. They are geared to promoting consistency and transparency in sentencing hearings. They are also aimed at promoting public understanding of the sentencing process.

6. In compliance with the afore, this court ordered for the accused’s record of previous conviction (if any) and a pre-sentence report. The prosecution indicated that the accused is a first offender. Thereafter, Mr Juma learned counsel for the accused gave oral mitigation on behalf of the accused and stated that the accused is sickly and partially disabled and bread winner of his family.
7. Further the accused is not a flight risk and has never missed attending court and prayed the accused be given a non-custodial sentence.
8. The probation department filed a pre-sentence report dated 5th September 2024 that indicates that the accused is an orphan but has strong family ties with other family members. That the family has been of great support during the trial and were shocked at his conviction as they still believe in his innocence.
9. That if he is incarcerated it will impede his care for giving responsibilities to his needy family especially his last born daughter. Further his family is able to work closely with the probation officer during this rehabilitation granted the strong family ties.
10. As regards his personal life, it is stated that he studied nursing aid course in a local college in Nairobi but did not manage to complete the same due to lack of funds. That, he did casual jobs until Dr. Ochieng took him up as his assistant at Lucky Medical Clinic in Mukuru Kwa Njenga.



11. That, he was married and separated from his wife in a union where they were blessed with three (3) children. That, he suffers from pain in the leg, chest ailments and is recovering from TB infection. Further, he has no previous record of conviction.
12. The report further indicates that, the accused acknowledge that, he visited the deceased's home but did not attend to her. That he agrees with the conviction but pleads with the court to consider granting him a non-custodial supervision sentence as he is the bread winner of the family.
13. As regard the views of the victim's family, it is indicated that they have no objection to the accused being granted a non-custodial sentence despite the psychological and financial loss they suffered, as they have since moved on.
14. Finally the report indicates that, the community held the view that, he can be given an opportunity to revert back to the society and that, he is a "social assets" due to his good hearted nature of helping his kin in the community. However, they were not aware of his conviction as the offence did not occur in his rural home.
15. I have considered the principles of sentencing above, the accused's records, mitigation and afore pre-sentence report, however, it is a fact that justice is balanced on a scale and the scale balances when the interest of both parties is considered. Therefore as much as there is no objection from all the parties that, the accused be released on a non-custodial sentence it should not be lost to all that the victim's voice will never be heard.
16. It suffices to note that the victim too had an expectation and right to life as anchored under Article 26 of the Constitution of Kenya. It was cut short. The loss of the victim is not just loss to the immediate family but the larger society. Justice cannot be served if the accused who had full knowledge that he had no medical qualification to attend to the victim, took the high risk and caused her death of the victim herein.
17. I hold the view that a non-custodial sentence will not serve the interest of justice. Furthermore, I take judicial notice of the fact that there are quite a number of cases of criminal and/or professional negligence where lives have been lost in the hands of unqualified person who undertake procedures that endanger lives. A deterrent, though modest sentence in this case is called for.
18. In the given circumstances, I sentence the accused, to serve a custodial sentence of five (5) years imprisonment. The same shall take effect from the date of the judgment herein and take into account the period the accused was in custody before he was granted bail.
19. Those then are the orders of court.
20. Right of appeal 14 days explained.

DATED, DELIVERED AND SIGNED THIS 13TH DAY OF JANUARY 2025.

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms. Kigira for the State

Mr. Jared Juma for the accused

The accused present virtually

Mr. Komen: court assistant

