



**Republic v Kipngok (Criminal Case 47 of 2023)
[2025] KEHC 1347 (KLR) (20 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 1347 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE 47 OF 2023
RB NGETICH, J
FEBRUARY 20, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

SAMUEL YATICH KIPNGOK ACCUSED

SENTENCE

1. By a judgement delivered on the 14th day of November, 2024, this court found the accused guilty of the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). The particulars of the charge were that the accused on the 8th day of May, 2019 at Bulioke Village, Molo Sirwe Location in Mogotio Sub- County within Baringo County murdered Edwin Cheruiyot. Upon the delivery of judgement, the prosecution counsel Mr. Mwangi informed the court that there were no previous criminal records against the accused and the accused should be treated as a first offender.
2. The court called for a pre-sentence report to be filed before mitigation. From the report, the accused was born in 1993. He dropped out of school class seven in on his volition. He later opened a hotel at Oterit centre for 2 years and later purchased a motorbike and operated boda boda business up to 2019 when he was arrested and charged with the offence herein. He married in the year 2014 and he is blessed with two daughters aged 6 and 9 years old.
3. The accused was staying with his uncle who does not have children and is on constant medication which was catered for by him. The accused's children are staying with the step grandparents as the wife went back to her paternal home and is currently in form three at Oterit secondary school.

Social Inquiry Report

4. From the report, the accused is 30 years old. His personal history reveals a resilient individual who has been very supportive to his family especially to his uncle who took him in since he was young as he



(uncle) was not blessed with children. The accused's desire is to reunite with his family and support them by taking up his parental responsibilities as a father.

5. The accused does not admit the charges. He recounts that the deceased was his grandson from his mother's side. He stated that he was going to Bolioko and the victim was coming from the opposite direction and both were moving at a high speed in a corner. The accused claimed that he applied brakes as he approached the victim but it was too late. He knocked him down and since it was in a hilly place, the victim started rolling down and became unconscious. The accused run to the victim's home and informed the parents who accompanied him to the scene only to find the victim dead. The accused fled for his life when alarm was raised as people went running baying for his blood. He went to the chief's office and reported the matter. He was latter taken to Mogotio police station where he was charged with the offence.
6. The accused does not admit the charge but regrets the circumstances that lead to the death of the victim. He prays for forgiveness from the family and court. He supports his family's efforts in initiating reconciliation process, appreciating the importance of restoring harmony within the family and the community.
7. The victim in this matter was the accused's grandson from the maternal side. He was 19 years old and a farmer. The victim's family indicated that the duo had a good relationship all through and had never had of any disagreement. The victim was the 5th born in a family of seven and very hardworking. At his young age, he had managed to buy himself a motorbike and a plot which he had not completed paying for. The parents who were interviewed indicated that the accused went to call them after the incident and told them that he had finished the victim. When the victim's parent went to the scene, they found out that the victim had head injury and his teeth were broken. The deceased was taking care of the family who are now struggling to make ends meet. This has impacted negatively on the family which is now demanding justice to be served.
8. The community have no issues with the accused and their wish is for the two families to reconcile as they are all related but also demand justice. They indicated that the accused has been very resourceful to his uncle who is currently ailing and in need of assistance in care and medication. The local administrators from the two sub-locations interviewed confirmed that the accused was the grandfather to the victim and were in good relationship before. They indicated that the accused was of great help to the community and helped his ailing uncle who was childless hence fostered the accused together with the accused's step-brother who committed suicide last year living the accused alone to take care of him. They further noted that there was no record of criminality in the family nor from the accused.
9. From the report, though the accused had a positive past life, the victim's relatives are still bitter for the loss of their kin which they termed as planned. It is worth noting that the accused's family had initiated reconciliation but the victim's family is adamant and want justice to be served. It is therefore their opinion that the matter be dealt with in accordance with the law.

Mitigation

10. The prosecution counsel Mr. Chepkilot mitigated on his behalf. He submitted that the accused is 31 years old with two children aged 9 and 6 and that the accused regrets the events of the fateful day since his mental state was impaired when he learnt that the deceased had intimate affair with his wife whom they have since separated. Counsel submitted that he is the sole bread winner of the two children and has made several attempts to reconcile with the deceased's family who are adamant but he is still willing to pursue reconciliation.



11. Counsel submitted that the accused had good relationship with the deceased and his family and that he is a young man of productive age who prays for a non-custodial sentence so that he can fend for his family; that he has had time to reflect and is remorseful; that he is a first offender and prays for another chance of life now that he has lived about half of his life expectancy. He further submitted that the accused is willing to undergo rehabilitation and urged this court to give him a chance to raise his daughters.
12. The prosecution counsel Ms. Omari submitted that the deceased was only 19 years, the first born and was said to be very hardworking and the incident has impacted negatively on the family and the victim's family are still very bitter and were dependent on the deceased. She is of the opinion that custodial sentence is appropriate as the accused will be rehabilitated to manage anger before he can be released back to the society.

Determination

13. The accused has been convicted for the offence of murder which the statute provide mandatory death sentence. However, the Supreme Court's decision in *Francis Muruatetu & another v Republic* [2017] eKLR while retaining the death sentence found that its mandatory nature was unconstitutional and for the purposes of this sentence had this to say: -

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“45. To our minds what Section 204 of the *Penal Code* is essentially saying to a convict is that he or she cannot be heard on why in all the circumstances of his/her case. The death sentence should not be imposed on him or her, or that even if he or she is heard, it is only for the purposes of the record as at that time of mitigation because the court has to impose the death sentence nonetheless, as illustrated by the foregoing Court of Appeal decision. Try as we might we cannot decipher the possible rationale for this provision. We think that a person facing the death sentence is most deserving to be heard in mitigation because of the finality of the sentence.

46. We are of the view that mitigation is an important congruent element of fair trial. The fact that mitigation is not expressly mentioned as a right in the *constitution* does not deprive it of the necessity and essence in the fair trial process. In any case, the right pertaining to fair trial of an accused pursuant to Article 50 (2) of the *constitution* are not exhaustive.”

The court therefore proceeded to pronounce itself thus:

58. We now lay to rest the quagmire that has plagued the court with regard to the mandatory nature of Section 204 of the *Penal Code*. We do this by determining that any court dealing with the offence of murder is allowed to exercise judicial discretion by considering any mitigating factors in sentencing an accused person charged with and found guilty of that offence. To do otherwise will render a trial, with the resulting sentence under Section 204 of the *Penal Code* unfair thereby conflicting with article 25(c), 28, 48 and 50(1) and (2) (g) of the *constitution*.

14. The sentencing objectives in Kenya has been captured under *Judiciary Sentencing Policy Guidelines* at page 15 as follows: -



- 1) Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - 2) Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - 3) Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
 - 4) Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
 - 5) Community protection: to protect the community by incapacitating the offender.
 - 6) Denunciation: to communicate the community's condemnation of the criminal conduct.
15. In deciding whether to impose a custodial or non-custodial sentence, the court is required to take into account the following factors: -
- a) Gravity of the offence:- sentence of imprisonment should be avoided for misdemeanor.
 - b) Criminal history of the offender:- Taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.
 - c) Character of the offender:- non-custodial sentence are best suited for offenders who are already remorseful and receptive to rehabilitative measures.
 - d) Protection of the community: - where the offender is likely to pose a threat to the community.
 - e) Offender's responsibility to third parties: - where there are people depending on the offender.
 - f) Children in conflict with the law: - non- custodial orders should be imposed as a matter of course in cases of children in conflict with law, except in circumstances where, in light of the seriousness of the offence coupled with other factors, the court is satisfied that a custodial order is the most appropriate.
16. The Supreme court in the Francis Muruatetu case at paragraph 71 amended the guidelines in respect of re-hearing sentence for the conviction of murder charge to include: -
- 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.
17. From the report, the accused acted of extreme anger upon learning an affair between his wife and the deceased. The deceased has since separate from his wife and his two children are being taken care of by his step grandparents. From the report, prior to the offence the accused conduct was good and was a hard-working person who took care of his family and an uncle who is ailing. He regrets the offence



and supports reconciliation. The deceased was also a young man aged 19 years, a very hard-working young man who was relied on by his parents and for that reason, the parents are still bitter and the loss of their son has negatively impacted on them.

18. Even though the accused may have been provoked by the affair between his wife and the deceased, in my view, he should not have allowed anger to take over him. He ought to have controlled his anger and used lawful means to resolve the issue. Taking away precious life should not have been an option. From foregoing, I find it appropriate to impose deterrent sentence though lenient taking into consideration sentiments given by the people interviewed by the probation officer and also the heavy family responsibility the accused has. I also take into consideration the fact that the accused supports reconciliation which his family has initiated. In view of the above I am inclined to impose 10 years imprisonment.

Final Orders: -

19.

1. Accused to serve 10 years imprisonment.
2. Period served in remand from the date of arrested to be computed in the sentence.
3. Right of appeal 14 days.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT ELDAMA RAVINE HIGH COURT (SUB-REGISTRY) THIS 20TH DAY OF FEBRUARY 2025.

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RACHEL NGETICH

JUDGE

In the presence of:

Mr. Chepkilot for accused.

Accused present.

Ms. Omari for State.

Karanja, Court Assistant

