



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Kirui (Criminal Case 7 of 2019)
[2025] KEHC 1506 (KLR) (17 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1506 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE 7 OF 2019
JK NG'ARNG'AR, J
FEBRUARY 17, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

BERNARD KIPKEMOI KIRUI ACCUSED

RULING

1. The convict herein Benard Kipkemoi Kirui is convicted of three counts of murder contrary to section 203 as read with section 204 of the [Penal Code](#), Chapter 63 Laws of Kenya.
2. This matter proceeded before Hon. Lady Justice Roselyne Korir who heard it to finality. My duty is just to deal with the issue of sentence.
3. I have gone through the entire judgement and clearly understand the nature of this case.
4. I have also considered the social inquiry report presented by the probation office.
5. The report is elaborate and detailed it clearly shows that the accused is 40 years of age and comes large family. He heavily indulged in alcohol and smoke bhang from the social inquiry. the mother of the victims is in much pain and seeks justice. The victim family is in unison with the mother and calls for severe penalty. The local administration also painted a bad picture about the accused and call for a tough penalty. It touches on the mitigating factors and the victim impact assessment at the same time.
6. In mitigation counsel for the accused states that the accused is remorseful. He is a first offender and understands the gravity of the offence that he has learnt and opened a new leaf in his life. He promises not to indulge in illegal activities and prays for forgiveness. Ultimately the accused seeks for a leniency sentence.
7. The prosecution in response relies on the social inquiry report and calls for a long custodial sentence. The argument is that the act was barbaric for a father to terminate life of his own blood and that no



leniency ought to be exercised. That the accused was not remorseful at all during the defence. Further, that this ought sent a clear message to those who abuse drugs in the society.

8. It is now my duty to consider the appropriate sentence to meet out in the circumstances of this case.
9. In so doing, I am guided by the provisions of our *Constitution* 2010, the *Penal Code* specifically Section 203 and 204, the *Judiciary Sentencing Policy Guideline* and Guideline judgements by both the Supreme court and the Court of Appeal which guide this court.
10. I therefore need to consider the foregoing against the filed social inquiry report, mitigation by accused and sentiments by the prosecution.
11. It is trite law and fact that Section 203 and 204 of the *Penal Code* provide for a death penalty for such an offence.
12. The death penalty has been a subject of consideration by the Supreme Court and Court of Appeal alongside the life imprisonment.
13. I am guided by the authority of;

Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2(KLR) (14 December 2017)(Judgment)*Francis Karioko Muruatetu & another v Republic* [2017] eKLR Neutral citation: [2017] KESC 2 (KLR) Republic of Kenya in the Supreme Court of Kenya Petition 15 & 16 of 2015 (consolidated) Dk Maraga, CJ & P, PM Wwilu, DCJ & VP, JB Ojwang, SC Wanjala, N Ndungu & I Lenaola, SCJJ December 14, 2017.

And also;

Court of Appeal at Malindi; *Manyeso v Republic* (Criminal Appeal 12 of 2021) [2023] KECA 827 (KLR) (7 July 2023) (Judgment) Neutral citation: [2023] KECA 827 (KLR) Republic of Kenya in the court of Appeal at Malindi Criminal Appeal 12 of 2021 P Nyamweya, JW Lessit & GV Ondunga, JJA July 7, 2023 between Julius Kitsao Manyeso Appellant and Republic Respondent and Appeal from the judgement of the High Court of Kenya at Malindi (R. Nyakundi J.) dated and delivered on 14th May 2020 in High Court Criminal Appeal No. 60 of 2018 arising from the original trial in Malindi Criminal case No. 64 of 2013.

14. The Constitutionality of the death sentence and the indeterminate period of life imprisonment have been discussed.
15. Flowing from the above, the death penalty is still valid in our law but in practice it has not been executed for a long period. I take judicial notice of this. I am also alive to the fact that the indeterminate period of life imprisonment has generated a lot of debate.
16. Parliament is yet to give effect to the directions by the Supreme Court and Court of Appeal on these issues.
17. Taking into account the manner in which the offence herein was committed I would have not hesitated to hand the ultimate death penalty but due to non-execution of the same and the debate surrounding it, I am not persuaded to go that direction.
18. I also agree with the argument that indeterminate life imprisonment and its related challenges in as far as human rights and the bill of human rights in our constitution are concerned, is an issue to ponder about. The emerging jurisprudence is an imprisonment to a period of between 30 to 40 years.



19. I am now left with one option to hand down a definite lengthy imprisonment against the accused. The sentence I intend to meet out is in place of the death penalty granted in the law and not life imprisonment.
20. Accordingly, I do sentence the accused as follows;
 1. 1st count Imprisonment for a period of 50 years.
 2. 2nd count imprisonment for a period of 50 years
 3. 3rd count imprisonment for a period of 50 years.
21. As to whether the sentences shall run concurrently or consecutively is a matter that needs to be clarified and justified. It is a grey area in murder sentences.
22. It must be appreciated that although the murders happened around the same time and one after the other in a continuous set of transaction it involved three separate and distinct lives.
23. Justice must be served for each of the lives lost. Life is sacrosanct and sanctified.
24. It must be respected and enjoyed as a right whether naturally or constitutionally. It is for the above reason that I am inclined to impose a punishment that the sentences do run consecutively to grant justice to each life lost.
25. Accordingly, the above sentences for avoidance of doubt shall run consecutively. The sentence to run from the date of plea taking on 24th April, 2019.
14 days Right of Appeal.
Orders accordingly.

SENTENCE DELIVERED, DATED AND SIGNED AT BOMET THIS 17TH DAY OF FEBRUARY, 2025.

HON. JULIUS K. NG'ARNG'AR

JUDGE

Sentence delivered in the presence of the Mr. Njeru , for the State, Chemutai for the Accused and Siele (Court Assistant).

