



**Republic v Okindo (Criminal Case 15 of 2016)
[2025] KEHC 3501 (KLR) (24 March 2025) (Sentence)**

Neutral citation: [2025] KEHC 3501 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 15 OF 2016
SM MOHOCHI, J
MARCH 24, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

GRACE BISIERI OKINDO ACCUSED

SENTENCE

1. The convict Grace Bisieri Okindo was arrested on 13th March, 2016 and on 21st March, 2016 she pleaded not guilty to the charge of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The Primary Victim, the deceased, was her husband.
2. The Court by the judgment delivered on 19th December, 2024 found her guilty of the offence and convicted her accordingly. Before mitigation, this Court did call for pre-sentence report.

Pre-Sentence Report

3. In the pre-sentence report dated 19th February, 2025, it was stated that convict regrets her actions, takes full responsibility and blames herself and accepts that she acted impulsively.
4. The siblings of the victim contended that they depended on the deceased since compared to them he was stable. They confirmed the couple had marital conflicts due to allegations of infidelity. That the conflicts persisted despite being resolved amicably in their rural home in Kisii having been reported in 2015.
5. That a second sitting was scheduled for March 2016 which never happened as the offence took place just before then. The family indicate that they are still bitter with her and pray that the Court would serve justice, custodial in nature.
6. The children of the victim who are also the children of the convict stated that they were shocked and felt great loss. They however stated that the stay in remand has given the convict the time to reminisce



on her actions and take responsibility for them. They have forgiven her and are ready to re-unite with her if the Court allows a non-custodial sentence.

7. The community including the area chief and the neighbours spoke well of her. They described her as a soft-spoken person who prior to that day had never been involved in any criminal activity. They too were in support of a non-custodial sentence and felt she had had time to reflect while in custody.
8. The Probation Officer recommended a non-custodial sentence but noted that the siblings of the victim back at her rural home are still very bitter and her safety is not guaranteed.

Mitigation

9. In mitigation it was stated that the convict has been in prison since 2016 and has undergone trainings in prison. That she also soul searched and regrets her actions out of a marital dispute. It was also contended that she was of advanced age, therefore the Court should consider the time spent in remand. That she has apologized to the entire family.

Analysis and Determination

10. The [Sentencing Policy Guidelines](#) 2023 vide Gazette Notice No 11587 of 1st September 2023 set out the sentencing principles.
11. Clause 1.3 sets out the sentencing objectives as follows:-
 - i. Retribution: To punish the offender for his/her criminal conduct in a just manner.
 - ii. Deterrence: to deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing similar offences.
 - iii. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding citizen
 - iv. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages sustained by the victim and the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs
 - v. Community protection: to protect the community by removing the offender from the community thus avoiding further perpetuation of the offender's criminal acts.
 - vi. Denunciation: to communicate the community's condemnation of the criminal conduct.
 - vii. Reconciliation: to mend the relationship between the offender, the victim and the community
 - viii. Reintegration: To facilitate the re-entry of the offender into the society
12. Pursuant to Clause 2.3.15, of the said guidelines, the following factors are to be considered in deciding whether to impose a custodial or a non-custodial sentence:-
 - i. Gravity of the offence
 - ii. Criminal history of the offender
 - iii. Children in conflict with the law
 - iv. Conduct of the offender
 - v. Protection of the community



- vi. Offender's responsibility to third parties:
13. It is to be noted that, the Supreme Court in *Muruatetu 1* stated that these guideless do not supersede judicial discretion. They help in providing guidance in consistency transparency and fairness.
 14. In this matter, the convict and the deceased were husband and wife, they had children and grandchildren. The unfortunate incident arose out of suspicions of infidelity and despite attempts from the extended to resolve the marital conflicts, the conflicts persisted which resulted into the incident which claimed the life of the deceased in his own home at the hands of his wife.
 15. Everyone including the children, siblings of the victim and the neighbour confirm the existence of marital conflicts but no one anticipated that it would escalate to what transpired. They would always work their problems out. Taking a life in itself is a serious offence which attracts a heavy punishment.
 16. Section 204 of the *Penal Code* provides that a conviction of murder attracts a death sentence. However, the Supreme Court of Kenya in *Francis Muruatetu & another v Republic* [2017] eKLR in finding that the mandatory nature of the death sentence to being unconstitutional stated that:-

“ 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*”
 17. The Court of Appeal translated a sentence of life imprisonment to a 30-year sentence in the case of *Ayako v Republic* [2023] KECA 1563(KLR) by stating that: -

“ On our part, considering this comparative jurisprudence and the prevailing socio-economic conditions in Kenya, we come to the considered conclusion that life imprisonment in Kenya does not mean the natural life of the convict. Instead, we now hold, life imprisonment translates to thirty years' imprisonment.”
 18. Although the preceding authority related to an offence under the *Sexual Offences Act* but the principle is the same that a sentence that will surpass the life expectancy of a person would amount to subjecting one to cruel, inhuman and degrading treatment.
 19. In *Njue v Republic* [2024] KEHC 2519 (KLR) the Court set aside a life imprisonment sentence and substituted it with a 30 years' imprisonment sentence for the offence of robbery with violence contrary to Section 296(2) of the *Penal Code*.
 20. In *Jonathan Njeru Manunga v Republic* [2024] KEHC 2332 (KLR), the Court set aside a life imprisonment sentence that had been commuted by a presidential pardon from the death sentence previously imposed and reduced it to the term already served for the offence of murder.
 21. Guided by the preceding decisions the questions that begs is that, what is the appropriate sentence given that the accused is a 62-year-old woman whom under Article 260 of the *Constitution*, is recognized as falling within the category of an “older member of society”. In considering what sentence to impose, the Court has to also consider Article 57 of the *Constitution* which guarantees the rights of older members of society to live in dignity and to be given reasonable care and assistance.



22. Apart from the siblings of the deceased who feel the convict should serve a custodial sentence, the mitigation, the views of the children and that of the neighbours and the community at large were geared towards a non-custodial sentence. The general feel is that there is willingness to reintegrate her back to society.
23. I note that the convict also acknowledges the commission of the offence, she is remorseful, apologetic and regrets allowing the situation to get out of hand due to marital conflicts. I believe she can be rehabilitated and reintegrated back to society. In order for the other victims of her actions to feel justice has been met and for purposes of retribution and deterrence the offence also calls for a custodial sentence.
24. I have also considered the Convict having served 9 years in remand during her trial, has had time to reflect on her actions and the consequences.
25. In the premise having considered the circumstances leading to the offence, the gravity of the offence, the fact that the convict is a first-time offender, her age and the recommendation by the probation officer, I am of the considered view that in order to meet the objective of retribution, deterrence and rehabilitation of the convict, both a custodial and a non-custodial sentence would be most appropriate.
26. The accused is hereby sentenced to fifteen (15) years imprisonment. Ten (10) years with effect from 13th March 2016 to deter and retribute her and 5 years thereafter on probation in order to rehabilitate and reiterated her back to the society.

It is so ordered

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 24TH DAY OF MARCH 2025

MOHOCHI S.M.

JUDGE

