



REPUBLIC OF KENYA



**Republic v Avedi (Criminal Case 35 of 2016)
[2025] KEHC 3358 (KLR) (18 March 2025) (Sentence)**

Neutral citation: [2025] KEHC 3358 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 35 OF 2016
AC BETT, J
MARCH 18, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

GAYLYN KEROTE AVEDI ACCUSED

SENTENCE

1. The Accused Gaylyn Kerote Avedi was convicted of the offence of murder contrary to section 203 as read with Section 204 of the [Penal Code](#).
2. Pursuant to directions taken on 21st January 2025, this court proceeded to take mitigation for purposes of sentencing as provided by Section 200 (2) of the [Criminal Procedure Code](#) which states:-

“Where a magistrate who has delivered judgment in a case but has not passed sentence, ceases to exercise jurisdiction therein and is succeeded by a magistrate who has and exercises that jurisdiction, the succeeding magistrate may pass sentence or make any order that he could have made if he had delivered judgment.”
3. In mitigation, Ms. Khatashi, Counsel for the Accused pleads for leniency. She submits that the Accused is in his early 50s and has been in custody since 2018. She states that he is a father of four (4) children who are currently under the custody of the Accused’s elderly and sickly father since his wife left him. She further states that the Accused has since committing the offence, made efforts to reconcile with the victim’s family through his father and they currently relate well. The Accused further submits that while in custody, he has acquired several certificates of training and demonstrated that he has changed.
4. The prosecution submits that from the Probation Officer’s report, the Accused is still in denial of the offence despite being found guilty. They posit that it is hard for a person to be rehabilitated if they are



in denial as he is yet to appreciate the veracity of the evidence adduced against him. The Prosecution urges the court to mete out a custodial sentence that should be proportionate to the offence.

5. The pre-sentence report reveals that the Accused maintains his denial and attributes the conviction to his failure to secure a witness to confirm his alibi. The Accused was a cousin to the deceased and according to the Accused's family, enjoyed a close bond. The Accused's family has held reconciliatory meetings with the victim's family and continue to share resources and amenities.
6. The victim's family experienced a profound loss and the victim's child has suffered as a result of the loss of her father because her mother had deserted them when she was nine months old. According to the Probation Officer, the victim's mother expressed no objection to the Accused being considered for a non-custodial sentence. She confirmed that they have reconciled with the Accused person's family who have been supportive to her and offered assistance in raising the deceased's child. She also expressed empathy for the Accused's children who are faced with irregular school attendance due to lack of fees and inability to meet basic needs.
7. The community report regarding the Accused is good. He is described as having a positive impact on the community, particularly on the youth whom he often engaged in construction contracts thereby providing them with opportunities for income and skill development. A picture of a person who is well regarded in the community was painted.
8. I have carefully considered the circumstances under which the offence was committed. The deceased suffered multiple cut wounds to the head, left ankle and left knee. This was no doubt a brutal vicious attack on a person who is reported to have been close to the assailant.
9. The Judiciary Sentencing Policy Guidelines sets out the objectives of sentencing to be retribution, deterrence, rehabilitation, restorative justice, community protection and denunciation. This was reiterated in the case of Dahir Hussein v. Republic [2015] eKLR which was cited by the Supreme Court of Kenya in Francis Karioko Muruatetu & Another v. Republic [2017] eKLR where the Court held that:-

“...In Kenya, many courts have highlighted the principles of sentencing. One such case is the High Court criminal appeal decision in Dahir Hussein v. Republic Criminal Appeal No 1 of 2015; [2015] eKLR, where the High Court held that the objectives include: “deterrence, rehabilitation, accountability for one's actions, society protection, retribution and denouncing the conduct by the offender on the harm done to the victim”.”
10. To achieve the objectives, one has to take such factors as the gravity of the offence, the criminal history of the offender, character of the offender, the protection of the community and the offender's responsibility to third parties into consideration.
11. I have carefully weighed the submissions by all the parties herein including the Probation Officer's report. I have also perused the various certificates that confirm that the Accused has undertaken various courses being Biblical Studies, Christian Teachings and paralegal training. The Accused has demonstrated that he is willing to reform. He is a man with heavy family responsibilities and is considered a useful person in the community. The Accused's family, the victim's family and the community are amenable to a non-custodial sentence.
12. The persistent denial of the offence by the Accused however is perturbing. By choosing to deny the offence despite the weight of the evidence that led to his conviction, the Accused has demonstrated that he is not remorseful for the offence. He has no regrets over the loss of his cousin's life. There is nothing in the mitigation to demonstrate that the Accused person deserves leniency. In the case of Republic



v. Ruth Wanjiku Kamende [2018] KEHC 5237 (KLR), Lesiit J, citing Muruatetu case (supra) stated as follows:-

“27. The court has set out certain principles which should guide courts in sentencing, which I have applied in this case. The Supreme Court then dealt with the importance of pre-sentence hearing and entertainment of mitigation from the accused person, among others. The Court has made clear exactly how the mitigation of the accused person should be applied by the court before the accused is sentenced. The Court stated that ‘it is during mitigation, after conviction and before sentencing, that the offenders’ version of events may be heavy with pathos necessitating the court to consider an aspect that may have been unclear during the trial process calling for pity more than censure or on the converse, impose the death penalty’.”

13. The discretion in sentencing rests with the court. Despite the recommendation that the Accused be considered for a non-custodial sentence, a non-custodial sentence is not suitable for the Accused who has failed to demonstrate his remorse. I am of the view that a non-custodial sentence will not serve the primary objective of the sentence which is to punish the Accused and denounce the offence. Had the Accused shown a sense of remorse, then the court would have been persuaded to impose a non-custodial sentence.
14. I have considered the fact that the Accused has been in custody since 2018.
15. I hereby sentence the Accused to serve five (5) years imprisonment from the date of this sentence.
16. The Accused has fourteen (14) days right of appeal.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 18TH DAY OF MARCH 2025.

A. C. BETT

JUDGE

In the presence of:

Ms. Chala for the State/Prosecution

No appearance for Ms. Khatashi for the Accused

Court Assistant: Polycap

