



**State v Nyawanda (Criminal Case E022 of 2022)
[2024] KEHC 290 (KLR) (24 January 2024) (Sentence)**

Neutral citation: [2024] KEHC 290 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E022 OF 2022
RE ABURILI, J
JANUARY 24, 2024**

BETWEEN

STATE PROSECUTION

AND

JEFF ONYANGO NYAWANDA ACCUSED

SENTENCE

1. On 11/12/2023, this court delivered judgment in this case and found the accused person Jeff Onyango Nyawanda guilty of the offence of Murder as charged and convicted him accordingly. The accused was thus found culpable of unlawfully and with malice aforethought, killing Roseline Atieno Nyawanda, who was his own biological mother, after which he set her body ablaze and the photographs produced in court show an unrecognizable being following not just the burning but roasting of the body. Only DNA analysis established whose body the burnt remains was.
2. The court called for a presentence report as well as the victim impact statement from the deceased's close family members. His advocate mitigated in writing stating as follows:

“The accused person is a first offender who is remorseful of what happened.

It was a recurrent theme from the prosecution side that the accused was not in his rightful mental status at the Commission of the offence. Though the accused is guilty but was insane and we urge this Honourable Court to refer the accused to a mental health facility as insanity is an illness (mental illness) requiring treatment rather than punishment. We urge this Honourable Court to consider the reasoning of the Court of Appeal in *Wakesho v Republic* (Criminal Appeal 8 of 2016) [2021] KECA 223 (KLR) (3 December 2021) (Judgment)

If this Honourable court is inclined to meting a sentence against the accused we urge this Honourable court to consider the fact that the accused is a young man who was at the



verge of graduation from Jomo Kenyatta University of Science and Technology before the unfortunate incident happened. He was also undertaking a computer course at Hyrax College in Kisumu. The accused should be given a chance to give back to the society by granting him a non-custodial sentence since if given custodial sentence he will be less useful to the society.

The accused person prays for leniency in sentencing.”

3. The Prosecution had no previous criminal records on the accused person hence he could be treated as a first offender. The defence counsel Ms Lukasile mitigated on behalf of the convict submitting that the accused is remorseful for the acts that the court had found him guilty of, he is a young man and is a first offender.
4. The convict was also given the opportunity to mitigate personally and he stated that he wanted the court to help him since he does not know how his life will be. He thanked this court for hearing his case, that he is a young person and wants to be involved in nation building.
5. The presentence report states that the accused was using drugs which affected him negatively and that his family prays that he be taken to hospital where he can receive treatment. He is also a threat to his family who do not know where to take him and how to handle him hence non-custodial sentence would not be suitable for him.
6. I have considered the mitigations and the presentence report as well as the circumstances under which the offence of Murder herein was committed.
7. The deceased suffered from stab wounds prior to her body being set ablaze by her own son whom she loved so much. The accused was mentally examined and found to be of sound mind prior to his trial and throughout the case, he did not exhibit any signs of a mental patient. He gave his defence on oath denying that he killed his mother, saying how they were attacked by thugs.
8. The accused was a university student who dropped out because of abusing drugs.
9. Indeed, the death of the deceased was harrowing courtesy of her last-born child and son.
10. Albeit his father initially was reluctant to testify in this case, my view is that he was trying to come to terms with what his son had done to the family at large which was quite traumatic.
11. The convict was determined to completely eliminate the deceased and that is why he not only used the knife to stab her but also used paraffin to burn her body.
12. This case also brings to light the Sexual Gender Based Violence (SGBV) in our society. The convict herein eliminated the deceased in the cold-blooded Murder of his mother.
13. Under section 204 of the Penal code, punishment for murder, upon conviction is death. However, the discretion in sentencing vests in the trial judge because as the trial court, I had the opportunity to see and hear evidence from both the prosecution witnesses and the defence and therefore observed their conduct and demeanor first hand. That discretion must however be exercised judiciously and not capriciously. In *African Continents Bank v Nuamani* [1991] NWLI 486, the Court stated that:

“The exercise of court’s discretion is said to be judicial if the judge invokes the power in his capacity as a judge qua law. An exercise of discretionary power will be said to be judicial, if the power is exercised in accordance with the enabling statutes, discretionary power is said to be judicious if it arises or conveys the intellectual wisdom or prudent intellectual capacity



of the judge. The exercise must be based on a sound and sensible judgment with a view to doing justice to the parties.”

14. In *S v Montsho* 2014 JDR 0743 (GNP) the Court imposed life imprisonment on a 27-year-old man who was found guilty of the murder of a three-year-old child. Thulane AJ observed that:

“The right to life is sacred, basic to humanity itself and enjoying Constitutional protection. Children in this country are entitled to play in the streets, especially just in front of their parental home. They have a legitimate claim to play peacefully on the streets, to enjoy their youth, to run around and enjoy the peace and tranquility of their homes and neighbourhood without the fear, the apprehension and the insecurity which constantly diminishes the quality of their lives”.

15. I have considered the objects of sentencing as stated in the Judiciary Sentencing Policy Guideline and as summarized in the *Francis Muruatetu & Another vs Republic* [2017] eKLR decision, which guidelines and principles are relevant in so far as sentencing in murder cases is concerned. In the Francis Muruatetu case, the Supreme Court guided as follows, both in the Original Petition and in the Directions given on 6/7/2021 while providing clarity on the Court’s judgment that had applied the principle that mandatory sentences were unconstitutional in as far as they deprived the trial courts of the discretion to mete out appropriate sentences having regard to the circumstances of each case and also denied the accused persons the opportunity to mitigate.

“vii. In re-hearing sentence for the charge of murder, both aggravating and mitigating factors such as the following, will guide the court;

- (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) The manner in which the offence was committed on the victim;
- (g) The physical and psychological effect of the offence on the victim’s family;
- (h)) Remorsefulness of the offender;
- (i) The possibility of reform and social re-adaptation of the offender;
- (j) Any other factor that the Court considers relevant.

ix. These guidelines will be followed by the High Court and the Court of Appeal in ongoing murder trials and appeals. They will also apply to sentences imposed under Section 204 of the Penal Code before the decision in Muruatetu. [emphasis added]

16. In the instant case, and applying the above guidelines, the convict is 26 years old and is a first offender. The offence was committed in response to gender-based violence in that the deceased was the biological mother to the accused convict herein. The convict roasted the body of his own mother as if he was ready to feast on her cadaver.



17. Prior to burning her body, as stated above and in the post mortem report, the convict had stabbed her and killed her first. I did not see any real remorse on the part of the convict who did not regret his actions and the consequences that followed. It follows that the possibility of the convict reforming and being rehabilitated in the community without first being in custody where there are rehabilitation programmes are nil. He never asked for any leniency from the court. He wants to be involved in nation building. How does one be involved in nation building when he has destroyed the life of a mother who brought him into this world and so painfully and took care of him?
18. Albeit in the presentence report there appears to be an admission on his part that he committed the offence, the court does not take that to be a confession at all. It relied on evidence adduced in court which irresistibly pointed to the accused as the one who eliminated his mother.
19. The mental assessment report was clear that the accused was mentally fit to stand trial and throughout the hearing, he had no episode of or issue with following the proceedings or even requiring medical attention on account of drugs abuse. I am not persuaded that the accused requires to be admitted in any hospital for treatment at all following the conviction for murder which was that of absolute guilt and not guilty but insane.
20. For all the above reasons, and although the punishment for Murder, upon conviction as stipulated under section 204 of the *Penal Code* is death, albeit the convict showed no real remorse for his actions and persisted that he was innocent, I exercise discretion and impose a less severe sentence and sentence the accused/convict herein Jeff Onyango Nyawanda to serve twenty (20) years imprisonment for the cold-blooded murder of his mother Roseline Atieno Nyawanda.
21. Right of Appeal explained, 14 days of today, to the Court of Appeal.
22. This file is closed
23. Ms Lukasile, the probobo advocate is hereby discharged from this matter, having concluded her task of representing the accused to the very end.
24. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 24TH DAY OF JANUARY, 2024

R.E. ABURILI

JUDGE

