



**Ouma v Director of Public Prosecutions (Miscellaneous Criminal Case E273 of 2020) [2024] KEHC 1404 (KLR) (Crim) (13 February 2024) (Resentence)**

Neutral citation: [2024] KEHC 1404 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS CRIMINAL CASE E273 OF 2020  
LN MUTENDE, J  
FEBRUARY 13, 2024**

**BETWEEN**

**PAUL OTIENO OUMA ..... APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... RESPONDENT**

**RESENTENCE**

1. Paul Otieno Ouma, the Applicant, was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence were that on January 29, 2008 at Woodley estate within Nairobi County jointly with others murdered honourable Melitus Mugabe Were. (Deceased)
2. The applicant was taken through full trial, convicted and sentenced to suffer death as provided by the law per the sentence meted out by Kimaru J. (As he then was) dated 10<sup>th</sup> February, 2015.
3. Through an undated application, the applicant seeks resentencing so as to be granted a different sentence from the one meted out and also the period spent in custody to be taken into account. The basis of the application is the jurisdiction bestowed on the court by caselaw, the case of *Francis Kariokor Muruatetu v Republic*, Supreme Court case No. 15 of 2015 and he urges that the mandatory death sentence was declared unconstitutional. The applicant urges further, that he is remorseful and prays for a second chance. That he has been in prison for the past 13 years.
4. That having voluntarily assisted the police to recover the exhibits used in the crime is akin to pleading guilty to the charges and demonstrates that he regretted his action from the onset. That the circumstances of the offence should be considered as follows: - that he had a young family and one daughter who depend on him, he is a first offender and had



never had in trouble with the authorities. That he is a hard working person and has undertaken rehabilitation programs which is an essential consideration as per the case of *Murnatetu* (2021) eKLR.

5. He refers to programs he has undertaken as Prisons journey, Bible League International and a further recommendation letter from Kamiti Maximum prisons. The applicant submits that the skills gained would benefit the community at large.
6. The applicant prays that the time spent in custody be considered so that the sentence runs from the from February 21, 2008 when he was arrested.
7. That the court considers rehabilitation, transformation, reintegration and the general weakness of human fraternity. That his action was informed by peer pressure. Reliance was placed on the case of *Samson Njuguna Njoroge v Republic*, High Court Criminal Case 150 of 2016 UR where the court determined that the period served was sufficient. The case of *Bernard Mwenga Wilson v Republic* ( 2016) eKLR where the deceased suffered multiple stab wounds , the accused was sentenced to 15 years; and, the case of *Rasesh Chotalal Shab v Republic* 337/16 where 2 lives were lost and the accused was sentenced to 20 years imprisonment.
8. The applicant prays that the court finds that the sentence served is adequate and releases him. In the alternative, he prays to be released on a non-custodial sentence for the remaining sentence period.
9. The prosecution did not file submissions.
10. This is a case where the accused jointly murdered the deceased on the night of January 29, 2008 by shooting. The deceased succumbed to fatal bullet wounds. The deceased was found bleeding and was abandoned outside his gate next to his Motor Vehicle registration No. KAS 073W. The flash lights were still blinking but nobody was inside. The deceased was taken to hospital by his wife where he succumbed to the injuries sustained.
11. The court convicted the applicant based on circumstantial evidence, his finger prints were found on the deceased vehicle.
12. Following social inquiry carried out, the applicant's family views are represented by his cousin who is ready to accommodate him at Mathare area where he resides and to assist in his reintegration in the event he is released.  
  
The applicant was known as a responsible person who took over parental responsibility over his younger siblings after the separation and death of their parents.
13. He was also kind and hardworking but had engaged in business ventures which introduced him to crime. The applicant admitted commission of the series of offences indicating that he pickpocketed, mugged and robbed the public. This particular incident was a robbery with violence which resulted to murder.
14. The deceased was 39 years and he had just won the parliamentary seat for Embakasi constituency when his life was cut short. His wives are currently in Italy and Kenya and the children were of tender age at the time of his death.
15. The deceased family is of the view that the court did not meet their expectation. They are still bitter and in pain and also indicate that the accused should rot in jail.
16. The Probation Officer recommends a non-custodial sentence and indicates that they will focus on behavioral change and reintegration. The accused also achieved grade 3 tests and took a welding course.



17. The provisions of article 50 as read with article 24 of the Constitution provide for the right to fair trial and equal protection and benefit from the law. (See the case of Francis Karioko Muruatetu & another v Republic [2017] eKLR)
18. It is hence imperative to determine the appropriate sentence to impose considering the objective of sentencing. In Alister Anthony Pereira v State of Maharashtra [2012] SC 3802 the court in dealing with the issue of objects of sentencing in India observed that:

“One of the point objectives of the criminal law is imposition of an adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is done. There is no strait jacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.”
19. In Yussuf Dahar Arog v Republic cited in Republic v Adan Godana Galgalo [2017] eKLR the considerations for sentencing were set out as follows:

“Such is of course, a maximum sentence and within that constraint, the court has a wide discretion which it exercises on judicial principles. Such principles would I believe, take into account the ordinary span of life of a human being, the general circumstances surrounding the commission of the offence, the possibility that the culprit may reform and become a law-abiding member of the community, the goals of peace and mutual to tendance and accommodation among people – those who are injured and those who have occasioned injury.”
20. The duty of the court is to balance the mitigating and aggravating circumstances. The sentence must also be proportionate to the crime.
21. Paragraph 3.1 of the Sentencing Policy Guidelines refers to the principle of Proportionality. It states that:

“The sentence meted out must be proportionate to the offending behaviour. The punishment must not be more or less than is merited in view of the gravity of the offence. Proportionality of the sentence to the offending behaviour is weighted in view of the actual, foreseeable and intended impact of the offence as well as the responsibility of the offender.”
22. There is already a finding that the applicant was found in possession of the gun used to kill the deceased. The applicant’s finger prints were also found on the body of the deceased vehicle. The deceased succumbed to six (6) gunshot wounds and from the description on the postmortem, injuries that were serious. No doubt, the deceased suffered a painful death, the murder was heinous and the impact on the secondary victims would take a long time to heal.
23. On the other hand, the applicant has demonstrated remorse in this application. He has also served 13 years of the sentence. He has undergone certain programs and alleges that his actions were informed by peer pressure.
24. The programs must be seen to demonstrate that the adequate counselling and prove that the applicant is ready to be reintegrated into the society. However, he was not a first offender as submitted by the



prosecution during the sentence hearing. The evidence was that the gun that was recovered in his possession had been linked to other offences. His finger prints were also part of the DCI data records after he had been convicted in previous cases.

25. Therefore, the 13-year period served is not sufficient period and is not commensurate with the offence. He cannot benefit from a non-custodial sentence. Paragraph 7 : 19 sub paragraph 2 of the [Sentencing Guidelines](#) provides that :

Criminal history of the offender: Taking into account the seriousness of the offence, first offenders should be considered for non-custodial sentences in the absence of other factors impinging on the suitability of such a sentence. Repeat offenders should be ordered to serve a non-custodial sentence only when it is evident that it is the most suitable sentence in the circumstance. Previous convictions should not be taken into consideration, unless they are either admitted or proved.

26. The applicant requires more time to reform and a definite custodial period would be adequate, reasonable and just sentence in this case. In reaching the decision to mete out sentence, I am persuaded by the case of [Linus Theuri Ndung'u v Republic](#) [2020] eKLR where the accused was found with the gun that was employed to shoot the deceased. The High court found that considering that the gun was in the appellant's possession, it was a legitimate conclusion that the deceased was shot by the appellant. The deceased died of "multiple injuries due to multiple gunshot wounds" The accused was convicted of manslaughter and sentenced to life imprisonment .The High court sentenced him to 20 years.
27. In [Yokongwa v Republic](#) (Criminal Appeal 101 of 2016) [2022] KECA 897 (KLR) , the Court of Appeal set aside the death sentence meted out on the appellant and sentenced him to 30 years jail term. The appellant had shot the deceased and body found in a pool of blood. The appellant reported immediately and invited the Anti stock theft unit and police officers to the scene.
28. In [Mohammed Hussein Mohammed v. Republic](#) -Criminal Appeal No. 126 of 2015, cited in [Jared Otieno Osumba v Republic](#) Criminal Appeal No. 110 of 2016 (UR) the Court of Appeal considered the sentencing guidelines as enunciated in the Muruatetu case (supra) and interfered with the death sentence meted out against the appellant with respect to the offence of robbery with violence and substituted the same with a sentence of 20 years' imprisonment. The court deemed it commensurate to the circumstances of the case and the appellant's culpability
29. In the instant case, the fact that the applicant led the police to recover the gun and exhibits in the case is not a mitigating factor and /or does plead a case for leniency at this stage. Considering the age of the offender, the circumstances of the offence, the impact on the victim; and, there being no evidence of remorse on his part, I resentence the applicant to serve twenty-eight (28) years imprisonment. The sentence shall be effective from the date of arrest, the 21<sup>st</sup> day of February, 2008.
30. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**L. N. MUTENDE**

**JUDGE**

In the presence of:

Applicant

Ms. Ntabo for ODPP



