



**Republic v Muthike (Criminal Case 20 of 2016)  
[2024] KEHC 1010 (KLR) (8 February 2024) (Sentence)**

Neutral citation: [2024] KEHC 1010 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL CASE 20 OF 2016  
RM MWONGO, J  
FEBRUARY 8, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**DANSON NDEREBA MUTHIKE ..... ACCUSED**

**SENTENCE**

1. The accused person was charged with the offence of murder contrary to section 203 as read section 204 of the *Penal Code*. The particulars were that on 17<sup>th</sup> April 2016 at Kandongu Shopping Centre in Mwea West, Kirinyaga County, he unlawfully murdered Paul Mutoto Alias Brathee.
2. At the hearing, the evidence was that about 2200 hrs on 17<sup>th</sup> April 2016, the deceased visited a pub within Kandongu market where he met up with PW1 (Ann Wanjiru Karanja). He offered to buy her some beers, but she declined and opted to take soda. They were together in the pub for a while, then left heading towards PW1s home.
3. On arrival at PW1s home, PW1 declined to enter into her house and stood outside instead. The two were standing near a house that was unoccupied when all of a sudden PW1 spotted the accused, who was her ex-boyfriend, approaching. The deceased and PW1 locked themselves in the unoccupied house to shield themselves from the accused.
4. However, the accused grabbed a panga and forced them to open the door. He apparently followed the deceased as he tried to flee, caught up with him and slashed him to death. He then surrendered to the Kadongu Police Post as members of the public were planning to beat him. He stated that he had no prior knowledge of the man he killed.
5. PW 3, AP Jonathan Mwaniki., testified and confirmed that on 17<sup>th</sup> December 2016 at about 2245 hrs the accused went to the AP Camp with a blood-stained panga saying that he had killed someone. PW3



was able to disarm the accused. When they visited the scene, they found the deceased who was badly injured. The accused handed the blood-stained panga to the Police at the Sagana Police Station.

### **Plea of Guilty**

6. When the matter came up for hearing on 21<sup>st</sup> November, 2022, the accused asked to take plea afresh. The court permitted this after it was satisfied that the accused had been advised by his counsel of the consequences of changing his plea. The charge and particulars were then read over and explained afresh. The accused pleaded guilty to the offence of murder.
7. Upon the accused's voluntary plea of guilty, the court convicted the accused with the offence of murder contrary to section 203 as read section 204 of the [Penal Code](#).
8. A mitigation date was fixed and the court directed that a Pre-sentence Probation Report be filed.
9. The post-mortem report was also filed for proof of the death. The cause of death is indicated as due to head injury due to assault by a sharp object. The report indicated that the head had compound comminuted fractures of the skull at the occipital area and that the brain was exposed. All together there were four cut wounds on the head and two on the deceased's right palm.

### **Mitigation and sentencing**

10. On 30<sup>th</sup> May, 2023, the matter proceeded for mitigation. The accused's counsel submitted as follows: that the accused is 47 years old, that he regrets the incident and is very remorseful; that he acted out of provocation; that he had tried to initiate negotiations with the victim's family but was not successful. He said had two wives before his arrest and four children. The oldest being 22 years old, and would like to participate in their education. He further said he has been in custody for 7 years since 2016; and whilst in prison, he undertook Bible course and anger management classes. He was baptized while in prison.
11. The Probation Officer's Pre-Sentence Report filed on 16<sup>th</sup> December, 2022 is not favourable to the accused, as it recommended that he was not suitable to be released back to the community.
12. However, the accused prays for a non-custodial sentence taking into account the time the spent in prison. The defence recommend for 8 years' imprisonment.
13. The prosecution urged the court to be guided by the Probation Officer's Pre-Sentence Report. Further, the accused has not been rehabilitated. The prosecution also seeks a sentence 8 years' imprisonment to enable the accused acquire skills in prison.
14. In addition, the prosecution filed a Summary of the case setting out the factual basis of the offence and disclosing the evidence that was available against the accused. The prosecution would in addition have exhibited the blood stained-panga that the accused surrendered.
15. The accused was convicted with murder. Section 204 of the [Penal Code](#) provides that a person convicted of murder shall be sentenced to death. The mandatory nature of the death penalty has been outlawed by the Supreme Court in the case of [Francis Karioko Muruatetu and Another -v- Republic and Others](#) 2015 eKLR. The effect is that the mandatory sentence cannot be imposed merely because the law so provides. A court must have discretion in determining sentence after taking all the mitigating and aggravating circumstances into consideration.
16. The supreme Court decision in Muruatetu case provides that, as a minimum, the mitigating circumstances to be considered before sentencing are:



- 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.

### **Conclusion and Disposition**

17. I have taken all these matters into consideration, including the Judiciary Sentencing Guidelines and the above sentencing guidelines; the period of 7 years spent in custody; and the Probation Officer's Pre-Sentence Report that recommended for a custodial sentence. I also note the brutal manner in which the accused struck and cut at the deceased, the raw intensity of intent and gruesome manner of the death. It was almost as if the accused was possessed by an evil spirit.
18. Taking into consideration all the above matters, I nevertheless find that the accused satisfies the criteria for a reduced sentence from the death sentence.
19. I hereby sentence the accused to eighteen (18) years imprisonment from the date of his arrest.
20. I further direct that the accused shall, subject to good conduct, and at the discretion of the Commissioner General of the Kenya Prison Service, be entitled to spend the last two years of his sentence term in non-custodial community service in a public facility identified by the Probation Officer in consultation with the Prison Service.
21. Orders accordingly.

**DATED AT KERUGOYA THIS 8<sup>TH</sup> DAY OF FEBRUARY, 2024**

.....

**R. MWONGO**

**JUDGE**

**Delivered in the presence of:**

Danson Ndereba Muthike the Accused in Person

Kanga holding brief for Mugo for the Accused

Mamba for the State

Murage, Court Assistant

