



**Director of Public Prosecutions v M’sobere (Criminal Case
E019 of 2022) [2024] KEHC 4740 (KLR) (16 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4740 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E019 OF 2022
TW CHERERE, J
APRIL 16, 2024**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS PROSECUTOR

AND

MUNG’ATHIA SAMUEL M’SOBERE ACCUSED

RULING

1. On 21st March, 2022, Accused assaulted the deceased with a rungu after his attempt to snatch a 100/- note from deceased failed.
2. That deceased died a painful death is demonstrated by the fact that he died 22 days after the assault and the family had in attempt to save his life caused him to be transferred from Meru to the Kenyatta National Hospital ICU where he unfortunately died on 12th April, 2022.
3. The Supreme Court in the case of Francis Karioko Muruatetu & Another vs. Republic, Petition Number 15 of 2015, considered the provisions of section 329 of the *Criminal Procedure Code* and gave guidance on sentencing as follows:

“The court may, before passing sentence, receive such evidence as it thinks fit in order to inform to inform itself as to the proper sentence to be passed...It is without a doubt that the court ought to take into account the evidence, the nature of the offence and the circumstances of the case in order to arrive at the appropriate sentence.”

4. The Supreme Court of India in the case of *Antony Pereira v State of Maharashtra* (2 AIR 2012 SC 3802) stated:

“70. Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just



and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles; twin objective of the sentencing policy is deterrence and correction. What sentence would meet the end 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.

71. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.
5. I have considered the facts of the offence that Accused without provocation assaulted the deceased over 100/- killing him. It is sad that life can be plucked off a man over a 100/- note.
6. The presentence and victim impact report filed on 15th April, 2024 discloses that Accused's family recommend a non-custodial sentence whereas Deceased's family oppose it not having come to terms with the death of their loved one.
7. I have considered the objectives of sentencing as set out at paragraph 1.3.1 of the Sentencing Policy Guidelines, 2023. Accused is a first offender. Whereas it is not possible to recompense the deceased's family for the death of their loved one, the court has a duty to impose a sentence that will ensure retribution by punishing Accused for the wrong he has committed and to ensure there is restorative justice for the loss and damages sustained by the victim, his family and the community.
8. After considering the foregoing and the circumstances under which the offence was committed, I sentence Accused to serve Ten (10) years' imprisonment from the date of conviction on 14th March, 2024

DATED THIS 16TH DAY OF APRIL 2024

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

Accused - Present

For Accused - Ms. Musyimi Advocate

For DPP - Ms. Rotich (PC -1)

