



**Republic v Njoroge & 2 others (Criminal Case 13 of 2018)
[2024] KEHC 3451 (KLR) (12 April 2024) (Sentence)**

Neutral citation: [2024] KEHC 3451 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 13 OF 2018**

**JM NGUGI, J
APRIL 12, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

SAMUEL NDUNGU NJOROGE 1ST ACCUSED

JOYCE NJAMBI MUNGAI 2ND ACCUSED

WILSON MWANGI MUNYUA 3RD ACCUSED

SENTENCE

1. By all measures, Lucy Njambi Nyagiko (“Deceased”) died a brutal and horrendous death. She was abducted outside her apartment by, among others, a person she used to call her husband; an intimate partner. She must have been terrified in the 15 or so minutes she was driven to Magumoini, off Kiambu-Ruiru Road in her husband’s vehicle. She had left her four-year old son in the apartment with a nanny. At Magumoini, she was verbally assaulted; then sexually assaulted by one of the assailants; before she was physically assaulted with sulfuric acid. She was, then, left for the dead. She died a day later in hospital.
2. In a judgment dated 05/04/2024, I found Samuel Ndung’u Njoroge; Joyce Njambi Mungai; and Wilson Mwangi Munyua (collectively, the “Accused Persons”, and, individually, “the 1st Accused Person”; “the 2nd Accused Person”; and “the 3rd Accused Person”, respectively) guilty of the murder of the Deceased on 24/01/2018. The judgment contains the graphic details of the murder which are incorporated herein by reference.
3. I am now required to determine the appropriate sentence to impose on each of the three Accused Persons. In order to determine the appropriate sentence, I must remember that the only purposes for which sentences may be legitimately imposed include to punish the offender to an extent and in a manner which is just in all of the circumstances; to deter the offender or other persons from



committing offences of the same or a similar character; to establish conditions which may facilitate the rehabilitation of the offender; to manifest the denunciation by the Court of the conduct in question; and to protect the community. In addition, I must adhere to the principle of parsimony and not impose a sentence on the Accused Persons that is more severe than that which is necessary to achieve the purpose or purposes for which the sentence is imposed. See the Kenya Judiciary Sentencing Guidelines.

4. For purposes of determining the appropriate sentence, as required by section 329 of the Criminal Procedure Code, I conducted a sentencing hearing today (12/04/2024) and heard from all the parties who are entitled to address me.
5. The Prosecution was represented by Mr. Gacharia. He informed the Court that the family of the Deceased had made their views known to the Probation Officer who wrote Pre-sentence Reports with respect to each of the Accused Persons. The family members who were present confirmed that their views were accurately captured in the Pre-sentence Reports on record and that they did not wish to address the Court.
6. The views of the family are captured in each of the Pre-sentence Reports. The grandmother of the Deceased, Margaret Gachambi, who raised the Deceased, decried the inhumane manner in which her granddaughter was killed. In views reiterated by all the other family members interviewed – including aunts and uncles – Cucu Gachambi stated that the family has never healed from the ordeal; and have never forgiven the offenders. They simply do not understand how anyone could choose to harm the Deceased, who they described as a peaceful and loving person. They hoped that “justice will prevail for effective closure.”
7. On his part, after drawing circumstances to the gory circumstances of the murder, Mr. Gacharia asked the Court to consider that there are eight aggravating factors in the case. These are:
 - a. That there was intricate planning for the offence;
 - b. That there was no provocation from the Deceased;
 - c. That there was an attempt to conceal the offence by faking a kidnapping and abduction;
 - d. That the crime had serious physiological and physical harm on the victim and the victim’s family – owing to the manner in which it was carried out;
 - e. That the offence was committed by a gang of four – three of whom included the convicts;
 - f. That the offence was committed in an inhuman and degrading manner – and included the humiliation and rape of the victim;
 - g. That the Deceased was killed because she was a woman and took a stand to leave her husband and that, therefore, this should properly be viewed as femicide.
8. Mr. Gacharia urged the Court to consider these aggravating factors against what he saw as only a solitary mitigating factor: that the three Accused Persons are first offenders. If the Court did so, Mr. Gacharia urged, it would come to the inevitable conclusion that this is one of the “rarest of rare cases” where the death sentence is called for. While reminding the Court that the death sentence is still in the menu of available sentences in Kenya in appropriate cases as the Court of Appeal recently affirmed in *Ruth Kamande Wanjiku v R* (Crim. Appeal No. 102 of 2018), Mr. Gacharia cited the famous Indian Supreme Court Case, *Bacchan v State of Punjab* [1980] 2SCC 684 thus:

Life imprisonment be substituted where the Penal Code previously provided for the death penalty, with the option of life imprisonment without parole for the most serious of crimes;



and that if not abolished, the death penalty should only be reserved for the rarest of rare cases involving intentional and aggravated acts of killing.

9. Mr. Gacharia urged that the circumstances of this case meets the criterion of being “rarest of the rare” given the manner of killing and the multiplicity of aggravating circumstances. He urged the Court to impose the death sentence on each of the three Accused Persons.
10. Both the 1st Accused Person and his counsel addressed the Court – in addition to filing submissions on 12/04/2024. The 1st Accused Person maintained his innocence insisting that he could not kill his wife whom he loved dearly. He still loved her and is as saddened by her death as her family. He urged me to consider that he and the Deceased have a son, who is now ten-years old, whom he has been taking care of until now. He has had sole custody of the minor, and none of the Deceased’s family members have ever shown any interest in taking care of him. The 1st Accused Person urged the Court to consider the best interests of the Minor in fashioning a sentence. Besides this Minor, the 1st Accused Person is also recently married and has a daughter who is not yet three years old. He also asked me to consider that he is both asthmatic and hypertensive – and that the medical facilities in prison might not be able to afford him the medical care he needs. Finally, the 1st Accused Person urged the Court to consider his wider social responsibilities in the community: he is an active elder in the Emmanuel Christian Church, Riruta, was an elected Member of the County Assembly representing Riruta Ward, and does much to help the community.
11. Mr. Mathenge submitted in mitigation on behalf of the 2nd Accused Person, who declined the opportunity to address the Court directly. She, also, did not file any submissions in mitigation. However, a Pre-sentence Report with respect to her was filed by the Probation Department as requested by the Court.
12. The 2nd Accused Person equally continued to protest her innocence but pointed out that she highly regretted and was sorry for the circumstances in which the Deceased was killed. Although she did not participate in the killing of the Deceased, she said she sympathized with the family for the Deceased. She asked the Court to consider that she has been a model citizen having never been in conflict with the law – and the fact that she is the sole breadwinner for her family of two children – a daughter and a son. The son is only in Form three at present. She asked the Court to consider fashioning a sentence that would not gravely disrupt the lives of her innocent children – in essence asking the Court to consider a non-custodial or very lenient custodial sentence so as to minimize the prejudicial effects on her children.
13. Mr. Mathenge submitted that the circumstances of this case, and in particular, the 2nd Accused Person’s involvement, did not warrant the imposition of the death penalty and urged the Court to consider a non-custodial or lenient custodial sentence in view of the mitigating factors. He relied on *R v James Kariuki Wagana* [2018] eKLR for the proposition that the death sentence should be reserved for the most heinous of crimes – and that the totality of circumstances here, with respect to the 2nd Accused Person’s involvement, do not rise to that high threshold.
14. Finally, Ms. Ndung’u, holding brief for Mr. Njuguna, for the 3rd Accused Person indicated that they had filed an Affidavit in Mitigation deposed on 11th April, 2024 and filed in Court on the same day. They wished to solely rely on it and the Pre-Sentence Report filed with respect to the 3rd Accused Person. In short, the 3rd Accused Person, equally maintains his innocence despite the guilty plea. However, like his co-Accused Persons, he says he feels truly bad and sad about the death of the Deceased, whom, he says, he did not know and has never met. He asks the Court to consider the following factors in sentencing which, he says, are extenuating:
 - a. That he is a first offender;



- b. That he is the sole breadwinner of his family of two children who are aged 19 and 18;
 - c. That he has participated in guidance and counselling sessions aimed at achieving self-control and self-transformation;
 - d. That he is remorseful and is willing “to express the same to the victim’s family”; and
 - e. That he is willing to go through further rehabilitation to be accepted back to the society.
15. I have read all the documents filed for consideration by the Court and considered the oral submissions made before me. In addition to the oral addresses in particular, I have considered the following:
- a. The Submissions dated 09/04/2024 by the ODPP;
 - b. The Submissions filed on 12/04/2024 by Counsel for the 1st Accused Person;
 - c. The Affidavit in Mitigation filed by the 3rd Accused Person on 11/04/2024.
 - d. The three Pre-Sentence Reports with respect to each of the three Accused Persons all filed in Court on 12/04/2024.
16. An appropriate starting point for sentencing in a murder case is to acknowledge that the harm caused by any offence that results in a death is immeasurable. The sentence in a murder case is not, and can never be a measure of the value put on the life of the victim. To insinuate otherwise would be profoundly disrespectful to human life and to the Deceased.
17. In determining the sentence to impose following a murder conviction, the Supreme Court, in Francis Karioko Muruatetu & Another v R [2017] eKLR gave guidance of the aggravating and mitigating circumstances the Court should consider:
- 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.
18. In the present case, the mitigating circumstances that have been legitimately urged by the Defence, and which I have taken into consideration in fashioning a sentence, include the following:
- a. Each of the Accused Persons is a first offender and their good antecedents as detailed in the Pre-sentence Reports;



- b. Each of the Accused Persons is a family person with heavy family responsibilities: the 1st Accused Person has multiple families in addition to the Minor who was the blessed product of his union with the Deceased; the 2nd Accused Person is a single mother of two children; while the 3rd Accused Person is a separated father of two children; and
 - c. The capacity of the three Accused Persons to reform as detailed in the Pre-Sentence reports.
19. On the other hand, the aggravating factors that have emerged in this case include the following:
- a. First, that this is a case of a carefully planned murder by two or more people: the judgment dated 05/04/2024 detailed the cold-blooded manner in which the three Accused Persons planned the murder; participated in luring the victim; brutally killing her; before attempting to conceal the heinous acts;
 - b. Second, I must take in to account the mental or physical suffering inflicted on the victim before death: As detailed in paragraph 1 of this ruling, the Deceased was subjected to severe psychological and physical suffering before her death;
 - c. Third, the use of a corrosive substance in the killing;
 - d. Fourth, the fact that this killing amounted to femicide and intimate-partner violence and the need for the society and this Court to loudly denounce the trend and communicate its sense of opprobrium to it. This Court must set a sentence which unambiguously demonstrates the Court's condemnation and abhorrence on behalf of the community of the type of violent criminality which the three Accused Persons in this case engaged in, through which they cut short the life of an innocent and defenceless young woman who had only expressed an inalienable right to make a choice on who she wanted to be with in life. The type of atavistic male violence towards females which is at the heart of this crime must be unambiguously denounced;
 - e. Fifth, the long-lasting impact on the family of the Deceased as eloquently narrated in the Victim Impact Statements captured in the Pre-sentence Reports. Each of the victim impact statements clearly demonstrates the devastating and lasting impact that the Deceased's death has had on her family and friends. I have taken each of these statements into account in determining the appropriate sentence to impose on the three Accused Persons.
20. The upshot of a proper consideration of these factors is the following. First, murder is, to begin with, a gravely serious offence. Parliament communicated this sense by prescribing a mandatory death sentence for murder. Of course, the mandatory nature of that prescription rendered it unconstitutional as the Supreme Court ruled in *Muruatetu Case*. However, the signaling by the democratically elected representatives of the people of Kenya is that murder is an objectively serious offence.
21. Second, in this case, the Accused Persons, in concert, brutally murdered the Deceased – a fairly youthful lady who had not yet turned 25 years old. As outlined above, the aggravating factors far outweigh the mitigating factors. In particular, it is a significant aggravating factor that the Accused Persons' offending was an extreme act of domestic violence and femicide and that it was carried out in the most brutish and sadistic of ways. The circumstances here call for a very stiff sentence to match the ruthlessness of the murder and its effect on the victims and the society. Looking at the evidence in totality, I have been unable to assign a higher or lesser degree of culpability to any of the three Accused Persons.
22. Consequently, taking each of the matters referred to above into account including those in the Accused Persons' favour, and balancing the aggravating factors set out above as best as I am able, for the murder



of Lucy Njambi Nyagiko (Deceased), I sentence each of the three Accused Persons to thirty (30) years' imprisonment. By dint of Section 333(2) of the Criminal Procedure Code, the sentence period shall run from 05/04/2024 since that is date the three Accused Persons were placed in custody.

23. Orders accordingly.

DATED AND DELIVERED AT KIAMBU THIS 12TH DAY OF APRIL, 2024.

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JOEL NGUGI

JUDGE

