



**Republic v John & another (Criminal Case 24 of 2014)  
[2024] KEHC 3775 (KLR) (4 April 2024) (Sentence)**

Neutral citation: [2024] KEHC 3775 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE 24 OF 2014  
EM MURIITHI, J  
APRIL 4, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**KENNEDY MURIERA JOHN ..... 1<sup>ST</sup> ACCUSED**

**PETERO KABERIA KIRANJA ..... 2<sup>ND</sup> ACCUSED**

**SENTENCE**

1. The Court has considered that the 1<sup>st</sup> accused (2<sup>nd</sup> accused died during trial) who has been convicted of murder c/s 203 as read with 204 of the [Penal Code](#) has been in custody for an aggregate period of 5 ½ years before bail and after bail was cancelled for (23/3/2014 -3/5/2017 and 17/9/2021 – 4/4/2024).
2. The accused field a written statement of Mitigation dated 28/8/2023 urging a non custodial sentence as follows:

“Sentencing.

The [Judiciary Criminal Procedure Bench Book 2018](#) which has been developed by our courts and now applicable provides elaborate step-by-step considerations that the court must apply when sentencing an offender. Pursuant to paragraph 22 provide the principles of proportionality, equality, uniformity, parity, consistency, impartiality, accountability/transparency, inclusiveness, respect for human rights and fundamental freedom and conformity to both domestic and international law with regard to standards on sentencing.

I find solace in the legal gazette notice Dumber 2970 gazette on 29/0112016, The former chief justice Dr. Willy Mutunga formulated sentencing policy guidelines that judicial officers have discretion to refer when sentencing in accordance with the following; sentence impact on the society, its impact on the family and the entire justice system. The sentencing



policy must promote restorative justice and values of rehabilitation. This is in line with the mandate of our correction service of rehabilitation.

My lordship, We persuade the court to be by the sentence ruling of *Titus Ngamau Musila alias Katitu*-criminal Case No 78 of 2014 quoting from the case of *Santa Signgh v State of Punjab* [1978],4 SCC 190 .... Stated as follows:

"Proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances extenuating or aggravation of the offence. The prior criminal record, if any, of the offender, the age of the offender the record of the offender as to employment, the background of the offender reference to education, home life, society and social adjustment, the emotional and mental condition of the offender, the prospects for rehabilitation of the offender, the possibility of return of the offender to a normal Life in the community, the possibility of treatment or training of the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence"

I pray for mercy and leniency based on the above mitigation and kindly finds that they outweigh aggravating factors having considered all the circumstances of this case. I pray if it pleases you my lordship, for a non-custodial sentence."

3. The Court directed a presentence report be filed by Jackson Kinyua Probation Officer Meru County Office dated 15/9/2023 which was in positive terms for a non-custodial sentence as follows:

"Summary

Your lordship, the accused person is a 28 year old man who is single and legitimately occupied himself with casual employments for a livelihood.

According to the area assistant chief of Nkandone sub location and members of the community, the accused person has never before been into conflict with the law and that his past conduct is good.

Information from all those interviewed including the immediate relatives of the deceased person, both the accused and the deceased persons are relatives and more so immediate neighbors. However, the same informants revealed that there has been a sour relationship amongst these family members arising from property ownership disputes and especially Miraa farms.

Your lordship, Members of the community and the local administration said that the offender cannot be a threat in the community to anybody if released on non-custodial sentence. They equally said that the offender is close to an orphan who has been brought up by his elderly grandparents after the demise of his father coupled with the remarrying of his mother when he was very young.

On his part, he feels sorry for what happened to the deceased who was an uncle; however he says that his death was occasioned by a mob justice led by family members over the land dispute. He says that he has sort forgiveness from the deceased family and he is optimistic that they will forgive him.

Family members interviewed stated that they long for that time the offender will be freed, they acknowledge the fact that they also lost one of their own, the deceased in this matter, and feel indebted for the loss. To them the land dispute that prevailed then caused a lot of damage to the entire family and wish that it had never existed. Currently they say that through the family, clan and elders the issue has been resolved and they are now calm.



The family members to the deceased person say that clan members had approached them to try reconcile the family and to them they feel that it was a good move. Though with heavy hearts, they are willing to be engaged together with the other family members so as to have a lasting solution.”

4. The Victim Impact statement dated 26/1/2024 emphasised the family relationship between the accused and the deceased and family reconciliation as follows:

“Victim Impact Statement

(Pursuant to Section 329C of the Criminal Procedure Code)

I Ruth Kabul of P.O. Box No 38 Laare, Meru County within the Republic of Kenya do hereby make oath and state as follows, THAT:

1. I am a victim in light of being the spouse to Joseph Kainga M'arimba (deceased) pursuant to Section 12(1) of the *Victim Protection Act*.
2. Prior to the murder incident, the accused and the deceased lived harmoniously in the same village since they were step-siblings.
3. I suffered psychological and emotional after the commission of the offence upon learning about the death of my husband (deceased).
4. I came to learn that the cause of my husband's death was as a result of a land dispute where the accused and deceased disagreed.
5. Stanley Mungatia who is the brother to the deceased testified against the accused as PW1 during the trial.
6. Upon the release of the accused from custody, clan members from the accused side approached me and with the guidance of my clan members the land issue was resolved amicably and we now live in harmony.
7. I have since reconciled with the accused who [sought] forgiveness and as such I harbour no animosity towards the accused.
8. As the deceased family, the period the accused was in custody was enough to atone for the offence he committed.
9. I humbly urge this Honourable Court to exercise its discretion and mete out a noncustodial sentence in respect of the accused.”

5. The DPP urged the Court to adopt the views of the Victim Impact Statement in oral submissions before the Court as follows:

“Mr. Masila

I rely on the Victim Impact Statement of 26/1/2024. The Victim testified against the accused during trial. The reconciliation effort was finalized when accused was out on bond. The issues are captured in the Probation Officer's Report. The Report recommends non-custodial sentence.

Both families are neighbours and I pray that you rely on the Victim Impact Statement and Probation Officer's Report. I urge the court to grant a non -custodial sentence.”



6. Counsel for the Accused urged a non custodial sentence as follows:

“Mr. Igweta

The family of the victim and accused have reconciled. The Court should also consider the time spent in custody. He was in custody and later bonded which was later cancelled. He indicates he has been in custody for 5 years.”

### **Appropriate sentence**

7. Upon considering the written statement of mitigation by the accused, submissions by his Counsel made before the Court, the submissions by the Counsel for the DPP and the positive reports contained in the Probation Officer and the Victim Impact Statement, and taking note of the accused’s pre-trial detention period of 5 ½ years and his youthful age at 28 years, the Court finds that the non-custodial sentence of Probation for a period of three (3) years is the appropriate sentence in this case to facilitate the rehabilitation and re-integration of the offender into Society, the retributive and deterrence objectives of sentences having already been adequately served by the long custody period.

### **ORDERS**

8. Accordingly, for the reasons set out above, the 1<sup>st</sup> accused offender is sentence to serve probation for three (3) years.

9. The 1<sup>st</sup> accused/offender shall be released and placed on Probation under supervision of the Probation Officer, unless he is otherwise lawfully held.

Order accordingly.

**DATED AND DELIVERED THIS 4<sup>TH</sup> DAY OF APRIL, 2024.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Igweta for the Accused.

Mr. Magoma for the DPP.

