



**Republic v Isaiah alias Gudka (Criminal Case E022 of 2023)
[2024] KEHC 5951 (KLR) (22 May 2024) (Sentence)**

Neutral citation: [2024] KEHC 5951 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL CASE E022 OF 2023**

TA ODERA, J

MAY 22, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

DAVID KEROSI ISIAH ALIAS GUDKA ACCUSED

SENTENCE

1. The offender herein was initially charged with murder contrary to Section 203 as read with 204 of the *Penal Code*. He later entered into a plea bargain agreement with prosecution and the charges were reduced to manslaughter contrary to Section 202 as read with 205 of the *Penal Code*. He pleaded guilty to manslaughter and he was accordingly convicted. This case is now coming up for sentencing. It has emerged from the facts of the case, mitigation the pre-sentence report and the able submissions by defence filed herein, that the deceased was a neighbour to the offender.
2. On the material day the offender returned home and found the deceased and his children assaulting his mother and he had also cut the hand of his brother on allegation that the offender had stolen his mobile phone. He got angry and picked a hoe handle and hit deceased with it on the head and he sustained serious head injuries which turned out to be fatal.
3. The offender in mitigation prayed for leniency of this court saying he was the sole provider of his family, mother and younger sister. It was submitted that the offender entered into a plea bargain agreement which save judicial time and so he ought to be considered for a lenient sentence.
4. The pre-sentence report is favourable to him as it indicates that he is generally a person of good character, a 1st offender, has strong family and community ties and the members of his community do not have any reservations for his release. However, the victims indicate that the family of the deceased still harbours some bitterness over the death of deceased.



5. The Supreme Court in the *Muruatetu case* set down the following factors to be considered in sentencing in murder trials;
- 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) Remorsefulness of the offender.
 - g) The possibility of reform and social re-adaptation of the offender.
 - h) Any other factor that the court considers relevant.
6. I have considered the nature of the offence, its circumstances, the pre-sentence report, mitigation, submissions, the remand period the youthful age of the offender that the offender saved judicial time by pleading guilty upon entering into a plea bargain agreement, the fact that he is remorseful and the fact that the family of deceased is still bitter with him and all the necessary factor. Though the offender was provoked when he found deceased assaulting his mother and brother he took the law into his own hands, used a dangerous weapon and applied excessive force on the deceased. Infact the post mortem report indicates that the deceased sustained a fracture of the brain which is evidence of the excessive force applied. The offender and the deceased were neighbours and since the family of deceased is still bitter the home environment is thus not conducive at the moment. I find lenient custodial sentence is thus necessary in this case as this will reform and protect him from the possible hostility from the family of deceased. I agree with defence counsel that the offender deserves leniency for entering into a plea bargain agreement and saved the precious judicial time of the court and expedited the determination of the case. I proceed to sentence him to serve 5 years imprisonment. Sentence to run from 22.5.23 when he was first remanded in prison till completion in full.

T.A ODERA

JUDGE

22. 5.24

DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF:

The offender

Koima for the State

Court Assistant: Oigo

Bonuke for the Offender

