



**Republic v Mubwani (Criminal Case E021 of 2022)
[2024] KEHC 4493 (KLR) (3 May 2024) (Sentence)**

Neutral citation: [2024] KEHC 4493 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL CASE E021 OF 2022**

AC MRIMA, J

MAY 3, 2024

BETWEEN

REPUBLIC STATE

AND

ANTHONY WEKESA MUBWANI ACCUSED

SENTENCE

1. The accused was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). He pleaded not guilty and a trial was held. Mid-way the trial, the Accused entered into plea-bargaining and eventually a Plea Agreement was entered into where he pleaded guilty to the charge of manslaughter.
2. The accused was accordingly convicted.
3. The Court called for a Pre-Sentence Report for purposes of sentencing.
4. This Court is well abreast of the principles on sentencing and the 2016 Judiciary of Kenya Sentencing Policy Guidelines. As stated by the Supreme Court of Kenya in [Francis Karioko Muruatetu & another v Republic](#) [2017] eKLR, despite their importance, the guidelines do not replace judicial discretion. This is what the Apex Court stated: -

(72) We wish to make it very clear that these guidelines in no way replace judicial discretion. They are advisory and not mandatory. They are geared to promoting consistency and transparency in sentencing hearings. They are also aimed at promoting public understanding of the sentencing process.
5. The purpose of sentencing is expounded in page 15, paragraph 4.1 of the [Sentencing Policy Guidelines](#) as follows: -

Sentences are imposed to meet the following objectives:



1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.
4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
5. Community protection: To protect the community by incapacitating the offender.
6. Denunciation: To communicate the community's condemnation of the criminal conduct.
6. In sentencing, the Court considers various mitigating factors. Some include: -
 - (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.
7. In this case, the Accused is aged 33 years old. He attacked and killed an innocent and defenseless 10-months' old child. Although the Accused and the mother of the child lived together as a couple, the Accused was not the father of the child. The Accused killed the child and disappeared.
8. The accused's detailed background has been captured in the Pre-Sentence Report. His attitude to the offence as well as the views of the local community administrators are on record. Mitigations were also tendered.
9. The circumstances under which the offence was committed were captured in the Report as well. The accused is not remorseful.
10. By considering the totality of the above coupled, this Court finds that the accused is unsuitable for a non-custodial sentence. He requires to undergo counselling and rehabilitation in prison.
11. Consequently, the following sentence is hereby rendered: -
 - a. The accused is hereby sentenced to 15 years' imprisonment. The sentence shall begin as from 21st September, 2022 when the accused was charged.
 - b. File marked as Closed.
12. Orders accordingly.



DELIVERED, DATED AND SIGNED AT KITALE THIS 3RD DAY OF MAY, 2024.

A. C. MRIMA

JUDGE

Sentence delivered in open Court in the presence of:

Mr. Kimani, Learned Counsel for the Accused.

Miss. Kiptoo, Learned Prosecutor instructed by the Director of Public Prosecutions for the State.

Chemosop/Duke – Court Assistants.

