



**Republic v Kagiri (Criminal Case 15 of 2018) [2024] KEHC 4488 (KLR) (2 May 2024) (Sentence)**

Neutral citation: [2024] KEHC 4488 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL CASE 15 OF 2018  
RM MWONGO, J**

**MAY 2, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**FRANCIS KARIUKI KAGIRI ..... ACCUSED**

**SENTENCE**

1. The Accused is charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence are that on the 16<sup>th</sup> September, 2018 at Riagiceru villaga within Kirinyaga County he unlawfully murdered Paul Nyamu Njeru.
2. When the proceedings commenced on 10<sup>th</sup> October, 2018 the accused pleaded not guilty to a charge of murder. For various reasons the hearing was not able to proceed expeditiously. However, on 19<sup>th</sup> October, 2021 the accused requested for plea bargaining, the victim’s family rejected the request for a Plea Bargaining Agreement. On 28<sup>th</sup> November 2022 the accused then stated that he was ready to change his plea of not guilty to a plea of guilty.
3. On 3<sup>rd</sup> May, 2023 the accused pleaded guilty to murder, and court convicted him accordingly. A pre-sentence Probation Report was ordered, and filed. The matter fixed for mitigation on 26<sup>th</sup> July, 2023.

**Facts Summary**

4. The state set out a summary of the facts of the case as follows: On 16<sup>th</sup> September, 2018 at about 2300 hrs, the accused herein (Francis Kariuki Kagiri) visited the homestead of the deceased (Paul Nyamu Njeru) demanding that the deceased give him the money Kshs 1500/- he had lent him. The deceased was hesitant and in the process a fight ensued. The accused (Francis Kariuki Kagiri) picked a mattock with a wooden handle and hit the deceased (Paul Nyamu Njeru).
5. PW-1 the mother to the accused (Florence Kanini Munyao) witnessed the incident. She was asleep when the noise by the accused and the deceased woke her up. PW-2(Lucy Kariuki Munyari) and PW 3



Paul Mbogo witnessed the incident. The deceased was badly injured by the accused. PW1 was assisted by the Nyumba Kumi member, Peter Mbogo Njithi to take the victim to the Hospital. She learnt the following day that the deceased succumbed to the injuries inflicted by the accused.

6. The post-mortem Report dated 19<sup>th</sup> September, 2018 indicates the cause of death to be shock resulting from massive internal hemorrhage resulting from blunt trauma in an assault.

### **Mitigation**

7. The accused is aged 46 years and has a young family. He has two children aged 23 years and 9 years. He is the sole breadwinner. They depend on farming. He is remorseful and regrets his action. He pleaded guilty to the offence. He has been in custody for 5 years. He seeks leniency in sentence and also that the time he has been in custody to be considered. While in custody he attained life skills, has a certificate in Spiritual programs and Bible study and has improved his mental wellness. The accused seeks for a non-custodial sentence.
8. The Probation Officer's Pre-Sentence Report dated 15<sup>th</sup> September, 2023 is favourable and recommends for a non-custodial sentence. It notes that the victim and the accused were good childhood friends. It also notes that there has been no reconciliation with the victim's family who want him to be jailed for life.
9. The court noted that several members of the victim's family are in court. They are dissatisfied with the Probation Officers Report. No reconciliation has been done between the two families. They seek for a harsh sentence for the accused.
10. The question before the court is: What is the appropriate sentence for the accused?

### **Analysis**

11. The accused was convicted for murder on his own plea of guilty.  
Sections 203 and 204 of the [Penal Code](#) under which the accused is charged provide for the offence of murder and the punishment for it as a death sentence.  
The sections read as follows:  
“ 203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.  
204. Any person who is convicted of murder shall be sentenced to death.”
12. The circumstances of the offence are that the accused person had lent the deceased Ksh.1500/= which he wanted paid back. When the deceased hesitated, a fight broke out between them, and the accused assaulted the deceased with a mattock leading to shock resulting from massive internal hemorrhage. The Post Mortem indicates that the deceased had bruises on the face back and lower limbs. There were multiple hematomas below the skin of the chest wall and fractures of the 5<sup>th</sup> 6<sup>th</sup> and 7<sup>th</sup> ribs. This shows that the offender beat the deceased repeatedly and in a burst of anger.
13. Under the Judiciary sentencing Policy guidelines, the objectives of sentencing are:-
  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.
14. The Supreme Court Muruatetu case of *Francis Karioko Muruatetu & Another v Republic (2017)* eKLR outlawed the mandatory nature of the death sentence. However, it did not outlaw the death sentence. The death sentence is not mandatory. Murder convicts are now allowed to mitigate prior to sentencing.

### **Mitigation**

15. In the *Muruatetu case (Supra)* the Supreme Court made several observations. Some paragraphs of that judgement are very helpful to Superior and Subordinate Courts when it comes to sentencing. At paragraph 48 the Supreme Court states as follows:-
- (48) Section 204 of the *Penal Code* deprives the Court of the use of judicial discretion in a matter of life and death. Such law can only be regarded as harsh, unjust and unfair. The mandatory nature deprives the Courts of their legitimate jurisdiction to exercise discretion not to impose the death sentence in appropriate cases. Where a court listens to mitigating circumstances but has, nonetheless, to impose a set sentence, the sentence imposed fails to conform to the tenets of fair trial that accrue to accused persons under Articles 25 of *the Constitution*; an absolute right.
16. The accused in his mitigation stated that he is 46 years old and has a young family. He has two children aged 23 years and 9 years. He is the sole breadwinner. They depend on farming. He is remorseful and regrets his action. While in custody has attained life skills, has a certificate in Spiritual programs and bible study and has improved his mental wellness.
17. Further the Probation Officer's Pre-Sentence Report dated 15<sup>th</sup> September, 2023 is favourable and recommends for a non-custodial sentence. Thus, the accused qualifies for a reasonable sentence keeping in mind the gravity of his offence.

### **Period spent in custody**

18. In addition, the period spent by the accused in custody should be considered in sentencing the accused. He was arrested on 2<sup>nd</sup> October, 2018 and has remained in custody since then; a period of 5 ½ years. Section 333(2) of the *Criminal Procedure Code* requires the court to consider the custody period already spent.

### **Disposition**

19. Taking into consideration all the above matters including the fact that the death sentence is not a mandatory sentence, I mete sentence herein as follows.



20. Considering the aggravated nature of the offender's actions and the effect of the same on the family and the community, the accused deserves a custodial sentence. In the case of *Mwei v Republic (Criminal Petition 104 of 2020)* [2022] KEHC 13045 (KLR) (21 September 2022) (Judgment) the court of held:

“From the evidence on record, the Petitioner on 29/8/2007 arrived home in a state of intoxication and got into a physical altercation with the wife and in the midst of the fight the Petitioner killed their three-year-old son without any legal justification.

In the end, the death sentence is hereby set aside and the same is substituted with 28 years' imprisonment. The said sentence shall run from the date of arrest.”

21. In this case, the sentence which I consider suitable for the offender is 22 years imprisonment. I so sentence him to 22 years imprisonment, such period to take into account any period he has spent in custody.

22. Orders accordingly.

**DATED AT KERUGOYA THIS 2<sup>ND</sup> DAY OF MAY 2024**

**R. MWONGO**

**JUDGE**

**Delivered in the presence of:**

Accused in person in Court

Mwangi K. holding brief for Makworo for Accused

Mamba State Counsel

Murage, Court Assistant

