



**Director of Public Prosecutions v Kimathi (Criminal Case
E052 of 2023) [2024] KEHC 7165 (KLR) (10 June 2024) (Sentence)**

Neutral citation: [2024] KEHC 7165 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E052 OF 2023
TW CHERERE, J
JUNE 10, 2024**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS PROSECUTION

AND

TITUS MUREGA KIMATHI ACCUSED

SENTENCE

1. Accused and his brother David Muchui Kimathi were removing charcoal from a kiln on 07th June, 2023. They worked for some time and then went and partook alcohol and returned to their place of work drunk. After sometime, Muchui went back to the drinking den and when he returned found Accused had slept and the charcoal reduced to ashes.
2. A quarrel ensued after Muchui struck Accused with a panga injuring his left hand. He wrestled the panga from Muchui but Muchui armed himself with a fork jembe and chased Accused threatening to harm him. Accused managed to wrestle the fork jembe from Muchui and struck him on the head sending him sprawling to the ground and later died from the injury to the head as evidenced by the post mortem report PEXH. 1.
3. The Supreme Court in the case of *Francis Karioko Muruatetu & Another v. Republic*, Petition Number 15 of 2015, stated as follows concerning the application of section 329 of the *Criminal Procedure Code*:

“The court may, before passing sentence, receive such evidence as it thinks fit in order to inform to inform itself as to the proper sentence to be passed...It is without a doubt that the court ought to take into account the evidence, the nature of the offence and the circumstances of the case in order to arrive at the appropriate sentence.”
4. Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the



nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles; twin objective of the sentencing policy is deterrence and correction. What sentence would meet the end of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. (See *Antony Pereira V State Of Maharashtra* (2 Air 2012 Sc 3802).

5. It is trite that the principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.
6. Accused pleaded guilty to a lesser charge of manslaughter and thus demonstrated remorse for his actions. I have considered the presentence and victim impact assessment reports filed on 07th June, 2024 and the victim's family and the community speak well of Accused and have no objection to a non-custodial sentence.
7. Accused who is 35 years old is a first offender and whereas it is not possible to recompense the death of his brother, the court has a duty to impose a sentence that meets the ends of justice for deceased's family as well as the community.
8. My considered view is that a probation order will give the probation officers an opportunity to reconcile Accused with his family members as well as the community and also make a follow up to ensure he does not re-offend.
9. After considering the foregoing and the circumstances under which the offence was committed, I sentence Accused to serve three (3) years' probation.

DELIVERED AT MERU THIS 10TH DAY OF JUNE 2024

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

Accused - Present

For the Accused - Ms. Oteko AdvocateF

For DPP - Ms. Rita Rotich (PC-1)

