



**Republic v Gina & another (Criminal Case 4 of 2020)  
[2024] KEHC 7874 (KLR) (21 June 2024) (Sentence)**

Neutral citation: [2024] KEHC 7874 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MARSABIT  
CRIMINAL CASE 4 OF 2020**

**JN NJAGI, J  
JUNE 21, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**LUBA IBRAHIM GINA ..... 1<sup>ST</sup> ACCUSED**

**HIRBO MANI SHARYO ..... 2<sup>ND</sup> ACCUSED**

**SENTENCE**

1. This court on the 5<sup>th</sup> April 2024 found the two accused guilty for the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The matter is coming up now for the court to determine the most appropriate sentence on the accused.
2. The sentence for the offence of murder under section 204 of the *Penal Code* is death. However, the Supreme Court in the case of *Francis Karioko Muruatetu & another v Republic* [2017] eKLR held that courts have discretion to impose any other sentence other than the death sentence in murder cases.
3. The prosecution reported that they had no previous records of the accused persons and asked that they be treated as first offenders.
4. Counsel for the accused, Mr. Behailu, mitigated that the accused and their families have since relocated to Narok town after their houses in Moyale were burnt down. That the accused have children in school and it will be devastating to the children if the accused are given jail terms. Counsel told the court that the accused are remorseful.
5. The court called for a pre-sentence report that was prepared by a Probation Officer based at Marsabit, Peter Kamande. The report in respect to the 1<sup>st</sup> accused indicates that he is aged 39 years and currently lives in Narok with his wife and children after his house and other property in Moyale were burnt down. That he maintained that he did not commit the offence. The report indicates that the 1<sup>st</sup> accused



- has 10 children of whom one is an adult. The rest are of tender age and are being taken care of by well-wishers after the accused was remanded.
6. The wife to the 1<sup>st</sup> accused was interviewed by the Probation Officer. She stated that she is a house wife. She pleaded with the court to give the accused a non-custodial sentence as he is the breadwinner of the family. That the children will suffer if the accused is jailed. She said that they are engaged in farming in Narok and live in a rented house.
  7. The Probation Officer interviewed the wife, a son and a brother to the deceased. The report indicates that the family is very bitter over the murder. That they are traumatized after losing the deceased and a son who was killed by the police after protests erupted in Moyale town over the killing of the deceased. That the family reported that they could not venture out freely when the 1<sup>st</sup> accused was on bond as they feared he may harm them. That in his absence they can move about freely. Further that the deceased's wife said that she was left to take care of her 7 children all alone after the death of the deceased. That two of the children have already dropped out of school. The family pleaded for justice to be done for the deceased.
  8. The report in respect to the 2<sup>nd</sup> accused indicates that he is aged 43 years. That he continued to deny that he committed the offence. That he has a wife and 9 children. That they shifted base to Narok after their house in Moyale was burnt down. They live in a rented house and the accused is the bread winner to the family. That of the children, one is married, another at home, four in school and three have dropped out of school due to school fees arrears. That due to language barrier she cannot open a business or be employed. That following the accused being remanded she relies on the accused's friends for help. She pleaded with the court to give the accused a non-custodial sentence.
  9. Both reports indicate that the ground at Moyale is still very volatile for the accused to be released back to the community.
  10. The family for the deceased filed a Victim Impact Statement Report through the Marsabit Probation Officer. The report basically captures what is stated in the Probation report. It adds that the family of the deceased reported that the families of the offenders have not approached the family of the deceased for reconciliation in accordance with the traditions and customs of their common community. That the members of the deceased's family fear for their lives if the offenders are released back to the community.
  11. I have considered the mitigation tendered by the accused persons, the contents of the pre-sentence report and the victim impact statement report. The evidence adduced against the accused persons in this case was that the accused and the deceased were neighbours. The deceased and members of his family were quarrelling with the 1<sup>st</sup> accused over one thing after another. On the evening of the material day, the deceased was on his way home when he was attacked by the two accused persons who shot him dead by use of a gun. The accused escaped. They were later arrested and charged.
  12. Sentencing of an offender lies at the discretion of the trial court. The court in exercising that discretion is required to consider all the circumstances of the case and determine the most appropriate sentence. In *Republic v Titus Ngamau Musila* [2018] eKLR, Wakiaga J. cited The Supreme Court of India in the case of *Antony Pereira v State of Maharashtra* (2 AIR 2012 SC 3802) where the Court stated the following on objectives of sentencing:
    70. 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.

71. 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 . . .”
13. The Supreme Court in the case *Francis Kariuki Muruatetu Case* (*supra*) set the factors to be considered in murder sentencing cases to include the following:-
- (a) Age of the offender;
  - (b) Whether the convict is a first offender;
  - (c) Whether the offender pleaded guilty;
  - (d) Commission of the offence in response to gender based violence;
  - (e) Character and record of the offender;
  - (f) Remorsefulness of the offender;
  - (g) The possibility of reform and social adaptation of the offender;
  - (h) Any other factor that the court considers relevant.
14. I have considered the mitigation by the accused persons that they are family men with young children in school. I have considered that the accused had to relocate from Moyale town to Narok town where they had to start their lives afresh after their houses in Moyale were burnt down.
15. On the other hand, I have considered that the 1<sup>st</sup> accused took out the life of the deceased over quarrels that he could have resolved amicably with the deceased. Attempts to resolve the dispute bore no fruit and the 1<sup>st</sup> accused resorted to a final solution, death of the deceased. The 2<sup>nd</sup> accused was enjoined by the 1<sup>st</sup> accused to eliminate the deceased. This was a murder most foul, aggravated by the fact that the accused used a gun to end the life of the deceased.
16. Whereas the accused are crying that their families will suffer if they are jailed, the family of the deceased is crying that the death of the deceased deprived them of a bread winner. The court has a duty to met out a sentence that serves the ends of justice. I do not think that this is an appropriate case for a non-custodial sentence. I consider custodial sentence to be one that will meet the ends of justice in the case.
17. I have considered other cases where sentences for murder were imposed. In *Simon Lokwawi Ekamais v Republic* [2021] eKLR, the court sentenced an accused person who had stabbed the deceased with a knife to a 30 years’ imprisonment.
18. In *George Ngugi Mungai v Republic* [2019] eKLR, the court also sentenced the accused to 30years imprisonment.



19. In *John Komu & 2 others v Republic* [2021] eKLR, the court cited the case of Nelson Mwiti Gikunda & 2 others v Republic [2018] eKLR where the court cited:

“The case of *John Ndede Ochodho alias Obago v Republic* KSM CA Criminal Appeal No 120 of 2014 [2018] eKLR, where the Court of Appeal upheld a sentence of 25 years in a case of murder where the appellant assaulted the deceased several times. The Court also cited the case of *Jonathan Lemiso Ole Keni v Republic* NRB CA Criminal Appeal No 51 of 2016 [2018] eKLR where the appellant shot a person without any provocation and the court imposed a sentence of 30 years’ imprisonment.

20. Being guided by the above authorities, and considering the mitigatory and the aggravating factors in this case, I sentence each of the accused persons to serve 30 years imprisonment, the same commencing from the date of conviction, i.e. 15<sup>th</sup> April 2024.

**DELIVERED, DATED AND SIGNED AT MARSABIT THIS 21<sup>ST</sup> JUNE 2024.**

**J.N. NJAGI**

**JUDGE**

In the presence of:

Mr. Otieno for Republic

Mr. Behailu for Accused persons

Accused – Both present

Court Assistant – Jarso

