



**Republic v Keverenge & 2 others (Criminal Case 47 of 2021)
[2024] KEHC 7114 (KLR) (11 June 2024) (Sentence)**

Neutral citation: [2024] KEHC 7114 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE 47 OF 2021**

**JN KAMAU, J
JUNE 11, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

BENARD KEVERENGE 1ST ACCUSED

BRITON JARENGAH 2ND ACCUSED

BENARD USINDE 3RD ACCUSED

SENTENCE

1. The Judgment herein was delivered on 27th February 2024. The Accused persons herein Benard Keverenge, Briton Jarengah and Benard Usinde were found guilty of the offence of the murder of Nicholas Analo contrary to Section 203 of the Penal Code as read with Section 204 thereof, and was convicted accordingly under Section 215 of the Criminal Procedure Code Cap 75 (Laws of Kenya).
2. In their mitigation, the 1st, 2nd and 3rd Accused persons were remorseful and urged the court to mete out a non-custodial sentence upon them.
3. The 1st Accused person indicated that he was thirty-six (36) years old and an orphan having lost his parents at an early age. He pointed out that before his arrest he had been employed by the County Government of Vihiga and that he lost the job due to his incarceration.
4. The 2nd Accused person stated that he was barely twenty-seven (27) years old thus was a young person who needed to be given another opportunity. He pointed out that he was raised without parents and that he was the only one available to take care of his grandparents. He asserted that the community’s view about him was positive.



5. The 3rd Accused person pointed out that he was also an orphan and that he was the only one staying in their home. He sought for a non-custodial sentence on grounds that he could be rehabilitated by the community.
6. They were all categorical that the community was positive about them being given a non-custodial sentence for them to be rehabilitated by the community. They pointed out that in the event the court chose to deviate from the pre-sentencing reports, then it should consider the period they had spent in custody under Section 333(2) of the [Criminal Procedure Code](#) and deem that as their sufficient sentence. They admitted that they were sensitive about the pain that the victim's family might have gone through.
7. On its part, the Prosecution pointed out that the deceased's family had undergone so much pain and were still bitter with the Accused persons as the deceased was their bread winner and his death took a huge toll. It asserted that the deceased's death had taken a toll on his wife and his children who witnessed the incident that led to his death. It added that the said children had testified that they still could not understand how anyone could be that cruel to their father.
8. It stated that whereas sentencing was the sole discretion of the court, it sought for custodial sentence to enable the Accused persons be rehabilitated and also to deter them and others from committing such offences. It urged the court to dispense justice to the family of the deceased.
9. Benard Mwembe, Probation Officer, Vihiga County Office filed three (3) Pre-Sentence Reports dated 26th April 2024 and filed on 29th April 2024 in respect of all the Accused persons. The court considered the contents of each of the said Pre-Sentence Reports.
10. The 1st Accused person was thirty-six (36) years old. He went to school at Mudungu Primary School and Kaumbwa Secondary School where he attained a mean grade of D+ in his Kenya Certificate of Secondary Education (KCSE). He also attained Kiambu Institute of Science and Technology and attained a Diploma course in plumbing and water supply. He worked at several places as a plumber with the last employment being at County Government of Vihiga.
11. He was married with three (3) children. He was a Christian and attended Wembenge Friends Church. He also drunk alcohol.
12. He denied having committed the offence and averred that he was a scapegoat. He sought leniency and pointed out that the incident was an eye-opening experience that had redefined his perspective about life. He prayed for a non-custodial sentence promising to adhere by its terms and conditions.
13. The 2nd Accused person was twenty-seven (27) years old. He attended Kavutia Primary School and proceeded to Kaumbwa Secondary School where he attained a mean grade of D-. He was planning to join Kiti College in Nakuru to pursue motor vehicle certificate when the incident happened and he was arrested.
14. He was a Christian and attended Friends Church Wambege. When he was released on bond, he proceeded to join Sabatia Technical College and trained in plumbing between 2019-2021 for a certificate course. He was single. He worked as a plumber. He complained of suffering from ulcers but did not abuse any drugs.
15. He denied having committed the offence and pointed out that it was only a frame up. He sought for leniency of the court and promised to be a law-abiding citizen henceforth. He prayed for a non-custodial sentence. He also stated that he was ready to abide by its terms and conditions.



16. The 3rd Accused person was forty-four (44) years old. He attended Kavutia Primary School and dropped out in class six (6) due to family problems. He was married and blessed with three (3) children. Before his arrest, he was engaged in farming and looking after livestock. He drank local brew moderately and smoked bhang. He had a previous conviction where he was arrested and charged when his dog bit a person and he was put on six (6) months' probation. He denied having committed the offence but prayed for leniency of the court.
17. All the Accused persons' families, the Local Administration and the Community prayed that the Accused persons be released on a non-custodial sentence on the ground that they did not have any history of violent behavior prior to their commission of the offence.
18. On the other hand, the deceased's family was still bitter and angry with the Accused persons for having been robbed them of a father and husband. They strongly rejected the Accused persons being released on a non-custodial sentence.
19. Notably, sentencing is one of the most intricate aspects of trial. Indeed, a trial does not end unless a sentence has been meted out. The principle of sentencing is fairness, justice, proportionality and commitment to public safety. The main objectives of sentencing are retribution, incapacitation, deterrence, rehabilitation and reparation. The Sentencing Policy Guidelines in Kenya have added community protection and denunciation as sentencing objectives. The objectives are not mutually exclusive and can overlap.
20. It was important that the sentence communicate to the community, condemnation of their criminal act. The sentence would indirectly send a strong signal to deter would be offenders from committing such an offence. The sentence also had to be one that was hinged on retributive justice for the secondary victims.
21. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of the offence at the time of sentencing them, chances of the Accused persons being reintegrated in the society would be next to impossible as there were possibilities of being harmed.
22. After serving a sentence, the offenders could rejoin society as reformed people capable of re-integration into the society. They would have learnt their lesson and others would have learnt through them.
23. This court looked at the Post-mortem Report dated 19th June 2018 and noted that the cause of the deceased's death was intracranial hemorrhage secondary to trauma. The Prosecution's evidence was that the Accused persons herein attacked the deceased and beat him with a metal bar and whips on allegations of stealing chicken.
24. Although the Probation Officer, the Accused persons' families, local administration and the Community urged this court to mete out a non-custodial sentence on the Accused persons, this court did not find it prudent to grant the same due to the nature of the offence.
25. The nature of the injuries the deceased sustained showed the malice that the Accused persons had and showed their intention of killing him. According to the Pre-Sentence Reports, the Accused persons did not appear remorseful. Despite having been found guilty after a full trial, they still denied having committed the offence. In the same vein, however, they also prayed for leniency.
26. Killing someone was an abomination in the society. That could explain why the victim's family did not want them released on a non-custodial sentence. Justice not only needed to be done but it had to be seen to be done.



27. Having considered the facts of this case and the Accused persons' mitigation and weighed against the death sentence that is prescribed for the offence of murder prescribed under Section 204 of the Penal Code, this court came to the firm conclusion that a non-custodial sentence would be unjust as a life was lost.
28. It was the considered view that as a life was lost and the Accused persons proceeded with the full trial, a sentence of fifteen (15) years imprisonment would be suitable and adequate herein as they did not kill him on the spot but he died later. It was irrespective that the deceased was a chicken thief or a trouble maker as the Accused persons ought not to have taken the law into their hands. They were the accusers, investigators and the jurors which was against the rules of natural justice. This court could have meted out a lower sentence had the Accused persons entered into a Plea Bargain Agreement.
29. Going further, this court was mandated to consider the period the Accused persons spent in remand while their trial was on going in line with Section 333(2) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya).
30. The said Section 333(2) of the *Criminal Procedure Code* provides that: -
- “Subject to the provisions of section 38 of the Penal Code (cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code
- Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody” (emphasis court).
31. Further, Clauses 7.10 and 7.11 of the *Judiciary Sentencing Policy Guidelines* provide that: -
- “The proviso to section 333 (2) of the Criminal Procedure Code obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.”
32. The requirement under Section 333(2) of the *Criminal Procedure Code* was restated by the Court of Appeal in *Ahamad Abolfathi Mohammed & Another vs Republic* [2018] eKLR.
33. The Accused persons were arrested on 23rd June 2018. They were released on bond on 4th July 2018, 6th July 2018 and 9th July 2018 respectively for the 1st, 2nd and 3rd Accused persons. These were periods that therefore ought to be taken into consideration while computing their sentence.

Disposition

34. Accordingly, for the reasons set out above, the Court having in its judgment convicted the offenders for the offence of murder contrary to Section 203 as read with 204 of the Penal Code, it is hereby directed that the 1st, 2nd, and 3rd Accused persons be and are hereby sentenced to fifteen (15) years imprisonment each to run from today.
35. The period the 1st Accused person spent in custody from when he was arrested on 23rd June 2018 until 4th July 2018 when he was released on bond and from 27th February 2024 when his bond was cancelled



after conviction and 10th June 2024, the period the 2nd Accused person spent in custody from when he was arrested on 23rd June 2018 until 6th July 2018 when he was released on bond and from 27th February 2024 when his bond was cancelled after conviction and 10th June 2024 and the period the 3rd Accused person spent in custody from when he was arrested on 23rd June 2018 until 9th July 2018 when he was released on bond and from 27th February 2024 when his bond was cancelled after conviction and 10th June 2024 be and is hereby taken into account while computing their sentence in line with Section 333(2) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya).

36. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 11TH DAY OF JUNE 2024

J. KAMAU

JUDGE

