



**State v Njuhi (Criminal Case E028 of 2023) [2024] KEHC 7550 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7550 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE E028 OF 2023  
DO CHEPKWONY, J  
JUNE 7, 2024**

**BETWEEN**

**STATE ..... PROSECUTION**

**AND**

**JOSEPH WAWERU NJUHI ..... ACCUSED**

**RULING**

1. The accused, Joseph Waweru Njuhi is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) Cap 63 Laws of Kenya.

The particulars of the offence are that:-

“On the 17<sup>th</sup> day of August 2023 at Thuita Village, Komothai Division in Githunguri Subcounty within Kiambu County murdered Mary Wambui Mburu”.

2. The accused was first arraigned in court on 7<sup>th</sup> August, 2023 whereby although a mental assessment dated 29<sup>th</sup> June, 2023 confirmed he was mentally fit to plead, the plea taking was deferred the accused to be assigned counsel.
3. On 11<sup>th</sup> September, 2023, the charge and information were read over and explained to the accused and he pleaded “Guilty” to the offence of Murder. The accused was informed of the seriousness of the offence and the penalty it carries, and asked whether he understands the same. The accused confirmed that he understood. The matter was deferred to allow for the prosecution to avail the facts and exhibits and for the defence counsel to consult with the accused.
4. On 18<sup>th</sup> September, 2023, counsel for the accused informed court that the accused appeared not to understand what was going on sine at onetime he admitted to the offence and at another time, he intended to proceed with the trial. She requested for the accused to undergo further mental assessment and the court called for the 2<sup>nd</sup> assessment.



5. It was not until 4<sup>th</sup> April, 2024, that the accused pleaded ‘Guilty’ to the offence of Murder after his counsel explained to court that the accused had been to court severally but had maintained plea of guilt. However, the facts of the case were not ready. The matter was then deferred to 9<sup>th</sup> April, 2024, whereby the charges were read out to the Accused and he said ‘ It is true’ in Kikuyu language and a “Plea Of Guilt” was entered for the accused person.
6. The facts of the case as stated by the Prosecution Counsel is that on the 17<sup>th</sup> August, 2023, a report was made to Ngeche Police Station by one Mbugua. It was reported that the accused had assaulted one Mary Wambui, the deceased, several times with a fork-jembe. The deceased was rushed to Kiambu Level 1 Hospital for treatment but she was pronounced dead at the hospital.
7. That the accused person was arrested by members of the public and was taken to Kibichoi Police Station whereby the police visited the scene and investigations established that the deceased was an Aunt to the accused and they lived on one parcel of land but in different compounds. It was further established that the fight was as a result of the ancestral land which is registered in the name of the accused. The police collected the fork-jembe which was taken to Government Chemist but the report had not been released due to backlog. She however produced the Exhibit Memo Form was PExhibit 1. She also produced the Post-Mortem Report as PExhibit 2. On being asked to confirm the facts, the accused stated that the facts are true and the court proceeded to convict the accused on his own “Plea of Guilty”.
8. The court is now called upon to determine the appropriate sentence for the accused. The prosecution indicated that the accused had no previous records. The court then called for a social inquiry to be conducted on the accused by the Probation and Aftercare Services Department and for a pre-sentence report to be filed. The pre-sentence report was filed on 25<sup>th</sup> April, 2024. According to the said report, the Probation Officer indicated that in conducting a social inquiry, they had considered the accused’s family background, the personal history, the circumstances of the offence, the attitude towards the offence, the view of the victim’s family, the community’s attitude towards the offender and the nature of the offence to come up with the conclusion and recommendations in compiling the same.
9. Having conducted the social inquiry, the Probation Officer concluded that the Accused person is 50 years old, illiterate with no skills, does not have parental or caregiving responsibilities. That he was a casual labourer to earn a living. According to the Probation Officer, the accused’s family described him as a social person who is diligent in his work and had never been violent. The local community at Thuita stated that the court should be lenient to the accused while on the part of the victim’s family , they have not come to terms with the loss of their mother who was the family pillar and urged the court to consider a deterrent sentence.
10. The Probation Officer, after taking into consideration the sentiments of the victim’s family recommended that the court should exercise discretion in sentencing the offender.
11. The law on the offence of murder is established under Section 203 as read with Section 204 of the [Penal Code](#) which state 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. As can be appreciated form the above provisions, the prescribed sentence for the offence of Murder is a death sentence. And this is what should be meted out against the accused. However, there has been



- a departure from this by the courts in this jurisdiction arising out of the Supreme Court's decision in the case of *Francis Muruatetu & Another -vs- Republic* [2017] eKLR, which recognized that sentences to be imposed for the offence of Murder should be appropriate, depending on various particulars.
13. In the Muruatetu's case, the Supreme Court found that the mandatory nature of the death sentence as provided for under Section 204 of the *Penal Code* was unconstitutional in the sense that whether or not one is convicted, they should be heard in mitigation. The Supreme Court felt that even if a person is facing the death sentence, he/she deserves to be heard in mitigation as an important element of fair trial because of the family of the said sentence. The Supreme Court then proceeded to state:-
- [66]. It is not in dispute that Article 26(3) of the *Constitution* permits the deprivation of life within the confines of the law. We are unconvinced that the wording of that article permits the mandatory death sentence. The pronouncement of a death sentence upon conviction is therefore permissible only if there has been a fair trial, which is a non-derogable right. A fair hearing as enshrined in article 50(1) of the *Constitution* must be read to mean a hearing of both sides. A murder convict whose mitigation circumstances cannot be taken into account due to the mandatory nature of the death sentence cannot be said to have been accorded a fair hearing.”
14. It is worth noting that whether to impose a custodial or non-custodial sentence, the following factors ought to be taken into account by the court:-
- a. Gravity of the offence
  - b. Criminal history of the offender
  - c. Character of the offender
  - d. Protection of the community
  - e. Offender's responsibility to the third parties.
  - f. Children in conflict with the law.
15. In the *Francis Muruatetu case*, the guide lines were amended to include:-
- a. Age of the offender
  - b. Being a first offender
  - c. Whether the offender had pleaded guilty
  - d. Character and record of the offender
  - e. Commission of the offence in response to gender based violence
  - f. The possibility of reform and social re-adaptation of the offender
  - g. Any other factors that the court considers relevant.
16. Having considered all the information on the accused in mitigation, recommendation in the pre-sentence report and the circumstances under which the offence was committed, it is worth-noting that life is sacred and terminating one's life cannot be trivialized or taken for granted. The accused and deceased being family, for reconciliation to be achieved, a sentence that achieves retribution and rehabilitation is appropriate.



17. The court then proceeds to sentence the accused to a sentence of thirty (30) years imprisonment having taken into account period he has been custody. Right of appeal 14 days.

It is so ordered.

**RULING DELIVERED, DATED AND SIGNED THIS ...7<sup>TH</sup> ... DAY OF ....JUNE..., 2024.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

Mr. Gacharia counsel for the State

M/S Loy Lisa counsel for accused

Court Assistant - Martin

