



**Republic v Mogi & another (Criminal Case 63 of 2016)
[2024] KEHC 9020 (KLR) (25 July 2024) (Sentence)**

Neutral citation: [2024] KEHC 9020 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 63 OF 2016
EM MURIITHI, J
JULY 25, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

PAUL MICHUBU MOGI 1ST ACCUSED

SIMON M’MWETI 2ND ACCUSED

SENTENCE

1. The accused were convicted of the offence of murder contrary to section 203 as read with 204 of the [Penal Code](#) with the established facts being that the together with another beat up their friend using walking sticks following a disagreement as they went home from a drinking spree, and he succumbed to his injuries on the same night.
2. In their mitigation, the Counsel for the Accused submitted on their middle age status at respectively 61 and 50 years, with their family obligations and remorse for their action to call for a non-custodial sentence. In reliance on the Presentence Report on both, which recommended probation sentence, Counsel urged a non-custodial sentence for the accused who he said were of good character and should not be in the congested prisons.
3. The Probation Officer in identical pre-sentence reports on the two accused persons said-

“The victim was aged 50 years at the time of his demise. He left behind seven children one of whom is still in school. The Victim’s family said that there has been minimal interaction between them and the offender’s family. They are opposed to his release on a non-custodial sentence, stating that there was big gap left by their kin. The area chief and other community leaders however added that there are no grudges between the two families, and they believe they will be able to live in peace if the offender is granted non-custodia sentence.”



4. For the DPP, a custodial sentence was urged in pursuit of *Sentencing Policy Guidelines* of 2023 “as a matter that calls for a custodial sentence which will ensure that the accused were rehabilitated on anger management issues so that they become better citizens”.
5. The Court considers that the offenders conduct of beating their colleague and inflicting fatal injuries is an act which must be discouraged by deterrent sentence. A custodial sentence is appropriate in addition to an opportunity for reform and rehabilitation of the accused.
6. As stated in the Judgment delivered on 23/5/2024 (No. 090/2024, para. 64), the fact that the accused were drunk when they beat their friend to death may be considered in the determination of the appropriate length of sentence. Although not technically a defence of intoxication the fact of their drunkenness must be taken to have reduced their responsibility for the offence.
7. A sentence of imprisonment for seven (7) years will serve the deterrence and rehabilitation objectives of the Penal treatment. The Court will also consider in accordance with section 333(2) of the *Criminal Procedure Code* any period of pre-trial detention of the accused awaiting the conclusion of their trial.
8. The first accused Paul Michubu Mogi has been in custody for a period of 7 years 10 months since the date of plea on 27/9/2016 having unable to raise bond granted on 13/11/2019.
9. The second accused Simon M’mweti, whose later case HCCRC No. 32 of 2019 was consolidated with the present case subsequently, has been in custody for an aggregate of four (4) months between the period of his charge on 18/4/2019 and his release on bond on 17/6/2019 and later upon conviction on 23/5/2024 when he was remanded to await the sentencing proceedings.

Orders

10. Accordingly, for the reasons set out above, the Court sentences both accused persons to serve imprisonment for a term of seven (7) years for the offence of murder contrary to section 203 as read with 204 of the *Penal Code*.
11. As regards the first accused Paul Michubu Mogi who has been in pre-trial custody for over seven (7) years has already served the full length of his sentence even with remission not considered. There shall therefore be an order for his immediate release unless he is otherwise lawfully held.
12. As regards the second accused Simon M’mweti, his sentence of imprisonment for seven (7) years shall take into account the four (4) months of his pre-trial detention in accordance with section 333 (2) of the *Criminal Procedure Code*.

Order accordingly.

DATED AND DELIVERED ON THIS 25TH DAY OF JULY 2024.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Masila, Principal Prosecution Counsel for the DPP.

Mr. Ng’etu, Advocate for 1st Accused.

Mr. Wamache, Advocate for 2nd Accused.

