



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Nduku (Criminal Case E002 of 2023)  
[2024] KEHC 9001 (KLR) (25 July 2024) (Sentence)**

Neutral citation: [2024] KEHC 9001 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CRIMINAL CASE E002 OF 2023  
FN MUCHEMI, J  
JULY 25, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**MARTIN MUMO NDUKU ..... RESPONDENT**

**SENTENCE**

**Brief Facts**

1. The accused pleaded guilty to a lesser charge of manslaughter following signing of the plea agreement that was filed in court on 11<sup>th</sup> June 2024. The offence was committed on the night of 23<sup>rd</sup> and 24<sup>th</sup> May 2023 according to the charge.
2. The accused admitted killing the deceased by strangling him with a barbed wire and dumping him at Kangokii dumping site area of Makongeni in Thika West Sub county within Kiambu County.
3. The accused in the company of one Daniel Mutinda hired motor vehicle registration number KCV 752E from Geoffrey Karanja and picked up the deceased at work as they were headed to Ukambani Matuu for casual work according to the deceased. The tracking device on the motor vehicle showed that the accused and the deceased together with Daniel Mutinda, drove to Kithimani area and were in that area until 2110 hours and thereafter drove back to Kangokii area where the vehicle got stuck. The deceased was later found in the subject motor vehicle strangled on the neck using a barbed wire. The accused admitted the offence but the prosecution noted that in the pre-sentence report filed on 24<sup>th</sup> June 2024, the accused did not show any remorse. The report further provides that the accused said he wanted to be released back to the community and taking care of his young family. He further stated that he rarely thinks about the incident and when he does, he does not feel mentally disturbed yet he claimed that it was his first time to commit such an offence. The report further indicated that the accused did not empathise with the victim's family and that he is not honest as he did not question why



he accompanied his friend on the belief that it was for a traditional wedding yet on reaching Kithimani where the ceremony was meant to take place, they did not attend the function but returned to Thika where the two committed the offence.

4. In mitigation, the defence counsel Mr. Koira filed submissions dated 25<sup>th</sup> June 2024 and further told the court that the accused was remorseful and that is what drove him to opt for a lesser charge of manslaughter. Counsel for the defence stated that the accused had limited academic background. The counsel said that the accused was working at Tala before the date of the offence whereas his parents live in Kiganjo area of Thika Subcounty. It was further argued that if the accused was to be placed on probation, he would have to go away from home to work to earn a living. As such, Mr. Koira urged the court to impose a non-custodial sentence.
5. The prosecution stated that the accused is a first time offender but the pre-sentence report does not support a sense of remorse on the part of the accused. The prosecution further stated that although the accused stated that he has a medical condition, he did not avail any documentary evidence to support the allegation. The prosecution further stated that the victim's family pray for justice and are not in favour of the accused being treated with leniency. The court was urged to impose the maximum sentence.
6. The prosecution further state that the accused had no fixed abode and his information about his abode was contradictory. As such, the prosecution opposed a non-custodial sentence as the probation officer will not be in a position to supervise him. The prosecution argued that a custodial sentence ought to be imposed.
7. I have considered the factors set out in Judiciary Sentencing Policy in regard to sentencing and mitigation. In my considered view, a non-custodial sentence is not appropriate having regard to the circumstances of the offence where the accused and another committed a brutal act on the victim that led to the loss of an innocent life. The victim was said to be a stranger to the accused that a personal score was the basis of the killing between the accused's accomplice and the deceased. A deterrent sentence is appropriate in this case for would be offenders to learn a lesson against engaging in senseless and brutal killings. However, this court considers that by the act of pleading guilty to the offence, the accused saved the precious time of the court. This is a factor that the court takes into consideration in mitigation of sentence.
8. The record shows that the accused has been in custody since the day of his arrest on 19<sup>th</sup> October 2023. Pursuant to Section 333 of the Criminal Procedure Code, the court will take into account this period while sentencing the accused.
9. The accused is hereby sentenced to serve fifteen (15) years imprisonment to commence from the date of arrest the 19<sup>th</sup> October 2023.
10. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 25<sup>TH</sup> DAY OF JULY 2024.**

**F. MUCHEMI**

**JUDGE**

