



**Republic v Musyala (Criminal Case 21B of 2017)  
[2024] KEHC 10310 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 10310 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CRIMINAL CASE 21B OF 2017**

**GMA DULU, J  
JULY 18, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOSEPH MUSYOKA MUSYALA ..... ACCUSED**

**RULING**

1. The accused person herein had been convicted of murder contrary to Section 203 as read with Section 204 of the Penal Code (Cap.63).
2. The particulars of the offence are that on the night of 21<sup>st</sup>/22<sup>nd</sup> July 2017 at Kikumu bridge, Kyuu village, Mbanya Location in Mbooni District within Makueni County murdered Michael Maitha Mutunga.
3. After the conviction, this file was sent from Voi High Court to Makueni High Court for sentencing in February 2024. However, in June 2024 the file was brought back to Voi, while actual sentencing should, according to the provisions of the Criminal Procedure Code (Cap.75), been done at Makueni High Court.
4. In mitigation before me virtually on 11<sup>th</sup> July 2024, Mr. Muthiani for the accused person informed the court that the accused person was remorseful and had promised to change his behaviour. Counsel also informed the court that while in remand custody, the accused undertook Bible studies; counsel emphasized that the accused had been in remand custody since 2017, and was now ready to be integrated into the society. Counsel prayed for non-custodial sentence.
5. In response, Mr. Tanui for the director of Public Prosecutions stated that though the accused person is a first offender, a life had been lost and the offence committed being serious warranted a custodial sentence, which should be commensurate with the gravity of the offence.



6. On my part, I have considered the circumstances of the offence; as well as the mitigating and aggravating circumstances explained to the court.
7. The accused was a first offender and, he was taking alcohol in a bar with the deceased before the incident. He has been in remand custody from 2017, and has asked for mercy and a non custodial sentence. These are the mitigating circumstances.
8. On the aggravating side, a life has been lost, and no reason has been given or suggested for the killing. The accused person also appeared eager to conceal his involvement in the killing, by making it appear that though they were at the bar together, he had nothing to do with the deceased person after leaving the bar.
9. I am aware that the statutory mandatory sentence for murder under the Penal Code (Cap.63) is death. However, with the recent developments in jurisprudence, especially the Supreme Court decision in the case of *Muruatetu =Versus= Republic (2016) eKLR*, it is now possible for a trial court to pronounce a lesser sentence in murder cases.
10. A non-custodial sentence is not appropriate however, in this matter due to the gravity and circumstances of the offence, as well as the nature of injuries suffered by the deceased person resulting in his death.
11. Taking all the above factors into account, I sentence the accused person herein to twenty (20) years imprisonment from 1<sup>st</sup> August 2017 when he first appeared before court.

**DATED, SIGNED AND DELIVERED THIS 18<sup>TH</sup> DAY OF JULY 2024 IN OPEN COURT AT VOI VIRTUALLY.**

**GEORGE DULU**

**JUDGE**

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Kazungu for State

Mr. Muthami for accused

Accused

