



**Republic v Muthama (Criminal Case E007 of 2021)  
[2024] KEHC 8590 (KLR) (16 July 2024) (Sentence)**

Neutral citation: [2024] KEHC 8590 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CRIMINAL CASE E007 OF 2021  
DKN MAGARE, J  
JULY 16, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**GRACE MUMBI MUTHAMA ..... ACCUSED**

**SENTENCE**

1. The accused was charged and convicted of the offence of murder. This was pursuant to a plea bargain agreement. The accused was advised on her rights.
2. The offence was that on the night of 12 and 13 June, 2020 at Labura village, Mweiga ward, Kieni West sub-county within Nyeri County, with others not before the court murdered George Kahuho Wahome.
3. The deceased George Kahuho Wahome's body was burnt beyond recognition. The body was identified at PGH on 15/6/2020. The accused was living with the deceased. The accused planned to kill the deceased and effected the plan on the night of 11/12 June, 2020 and contacted Wilfred Nyabiosi, who has already been convicted.
4. She bought petrol from Jakanu, belonging to Joseph Kabiui, in a yellow 10 litres jerrican. The deceased came home in KCC 994S Toyota Probox where the deceased was killed by the accused together with Wilfred Nyabiosi Nyamange. They torched his body and left the body by the road side. The vehicle KCC 994S was guided to the co-conspirator.
5. She was arrested a year later. This was one of the most well planned and executed murder plans. The accused continued as a grieving widow until chips began to fall.
6. The prosecution removed the death penalty from the sentences they were seeking. The life imprisonment was also removed from the table. However, the parties agreed that sentencing is sole



discretion of the court. The best sentence that could have been available was death sentence. However, the same is not on the table. It was not necessary to remove life imprisonment from the table as the Court of Appeal had declared life imprisonment unconstitutional.

7. In the case of *Barasa v Republic* (Criminal Appeal 219 of 2019 [2024] KECA 324 (KLR) (15 March 2024) (Judgment), the court of Appeal stated as follows: -

“Given the circumstances in which the offence was committed, the complainant being a young girl whom the appellant as the stepfather ought to have protected but instead violated, the appellant deserved a deterrent sentence. The sentence of life imprisonment was an option which was available in the exercise of discretion in sentencing and would in our view have been appropriate.

13. In accordance with our decision in *Evans Nyamari Ayako v Republic* (supra), translating life imprisonment to a term sentence of 30 years’ imprisonment, we allow the appellant’s appeal; on sentence to the extent of substituting the sentence of life imprisonment that was imposed on the appellant with a term sentence of 30 years’ imprisonment. The sentence of 30 years shall be calculated from the date the appellant was first arraigned in court in accordance with Section 333(2) of the Criminal Procedure Code.

8. In *Manyeso v Republic* (Criminal Appeal 12 of 2021) [2023] KECA 827 (KLR) (7 July 2023) (Judgment), the Court of Appeal sitting in Malindi Nyamweya, Lesit and Odunga, JJA) held that life imprisonment unconstitutional substituted the same with 40 years. They stated as follows: -

“We recognize that although the Judiciary released elaborate and comprehensive *Sentencing Policy Guidelines* in 2016, there are no specific provisions for the sentence of life imprisonment, because it is an indeterminate sentence. Nevertheless, we are in agreement with the High Court decision in *Jackson Wangui*, supra, which found that it is not for the court to define what constitutes a life sentence or what number of years must first be served by a prisoner on life sentence before they are considered on parole. This is a function within the realm of the Legislature...

... We are therefore of the view that while the appellant should be given the opportunity for rehabilitation, he also merits a deterrent sentence. We, therefore in the circumstances, uphold the appellant’s conviction of defilement, but partially allow his appeal on sentence. We accordingly set aside the sentence of life imprisonment imposed on the appellant and substitute therefor a sentence of 40 years in prison to run from the date of his conviction.”

9. It is therefore my understanding that in each case we shall translate what life imprisonment means. Life imprisonment is therefore a sentence of 40 years, in the present case. The said sentence has been removed from the table.

10. A probation report was filed on 18/1/2024. The offender has 3 children in grades 8, 4 and 1. The accused is hot tempered, quick to anger and will often resolve issues by herself including burning her husband of 12 years. There appears to have been some extra marital issues which bred bitterness. Her family is receptive while the victim’s family was still bitter. The community was divided but majority thought that the accused was deliberate.

11. The court notes that she proceeded to accept the plea voluntarily. The nature of her actions were barbaric and the person heartlessly killed was her husband. The matter was planned for a long time. She pretended everything was in order until her arrest.



12. The court considers her plea bargain was a positive step taking away both life sentence and death penalty. However, the action was carried out with utter ruthlessness. The defacing and burning of the deceased in petrol and throwing his body by the roadside is barbaric and deserving a sterner punishment, but less than life and death sentence.
13. I understand the sentencing guidelines cover plea bargain as follows: -
- “4. Plea bargaining is an alternative to trial with the purpose being to expedite  
4.1 the administration of justice in accordance with Article 159 (1) (d) of *the Constitution*.
4. A prosecutor and an accused person or his representative may negotiate and  
4.2 enter into an agreement for the reduction of a charge to a lesser included offence; the agreement of a basis of facts in relation to the current charge, or the withdrawal of the charge or a stay of other charges or the promise not to proceed with other possible charges.
14. The heinousness of the crime is unnecessary for the art of killing and meets the purpose only of inflaming emotions and dehumanizing the deceased and traumatizing the children and other victims.
15. The sentencing guidelines provide the following considerations for murder and aggravating factors: -
- “Aggravating Factors in Murder Cases:
- i. A significant degree of planning or premeditation.
  - ii. The mental or physical suffering inflicted upon the victim before death. Factors such as the type of weapon used, torture or inhuman or degrading treatment prior to death will be relevant.
  - iii. The use of duress or threats to enable the offence to take place.
  - iv. The vulnerability of the victim e.g., due to age or disability.
  - v. The fact that the victim was providing a public service or performing a public duty.
  - vi. Multiple victims or multiple perpetrators.
  - vii. Where the offence involved an abuse of trust. The relationship between the victim and the accused should be carefully considered.
  - viii. Offence was motivated by, or there was demonstrated hostility to the victim based on his or her race, gender, sex, sexual orientation (or presumed sexual orientation), pregnancy, marital status (so called ‘honour killings’ for example), health status (e.g., murder occurred because of the HIV status of the victim, or albinism), ethnicity, culture, dress, language, birth, or religious orientation (or presumed religious orientation).
  - ix. A history of assaults, threats, or coercion upon the same victim.
  - x. Absence of self-defence or provocation.
- ix. The offence involved deliberate drugging or stupefying of the victim.



- x. Proven abduction or kidnapping of the victim before the murder was committed.
  - xi. Where a demand for ransom was made, signifying a financial motive. xiv. Concealing, destroying, or dismembering the body.
  - xii. Where the murder was conducted in furtherance of a ritualistic practice such as witchcraft.
16. The murder was aggravated not only because of concealing for one year and leading the investigators down the garden path but also meticulously planned. The Accused almost got away with murder, pun intended.
17. None of the mitigating factors set out in clause 5.2.5 of the updated sentencing guidelines are available. Both the harm and culpability is very high.
18. The court notes that the deceased and the Accused had young children. However, the children will be raised by her family. She shall forever be happy that she has a supporting family. She is also 37 years and has a whole life ahead of her. A sentence of 35 years will suffice in the circumstances.

### **Order**

19. I make the following orders: -
- a. The Accused is sentenced to 35 years imprisonment commencing on 23/7/2021, the date of arrest.
  - b. Right of Appeal on severity of sentence only 14 days.
  - c. The file is closed.

**SENTENCE READ AT NYERI ON THIS 16<sup>TH</sup> DAY OF JULY, 2024, THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

In the presence of:-

Ms. Kaniu for the State

Mr. Ombongi for the Accused

Court Assistant – Jedidah

