



**Director of Public Prosecutions v Naweet (Criminal Case E002 of 2022) [2024] KEHC 12810 (KLR) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12810 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE E002 OF 2022  
EM MURIITHI, J  
OCTOBER 24, 2024**

**BETWEEN**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... PROSECUTOR**

**AND**

**PATRICK NAWREET ..... ACCUSED**

**RULING**

**Introduction**

1. The objectives of sentencing are set out in the Sentencing Guidelines 2023 of 1/9/2023 as follows:

“1.3 Objectives Of Sentencing

1.3.1 Sentences are imposed to meet the following objectives.

There will be instances in which the objectives may conflict with each other – insofar as possible, sentences imposed should be geared towards meeting the objectives in totality.

- (i) Retribution: To punish the offender for their criminal conduct in a just manner.
- (ii) Deterrence: To deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing offences.
- (iii) Rehabilitation: To enable the offender to reform from his/her criminal disposition and become a law-abiding person.



- (iv) Restorative justice: To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs.
- (v) Community protection: To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.
- (vi) Denunciation: To clearly communicate the community's condemnation of the criminal conduct.
- (vii) Reconciliation: To mend the relationship between the offender, the victim and the community.
- (viii) Reintegration: To facilitate the re-entry of the offender into the society."

2. The accused in this case was convicted for murder in a Judgment delivered on 15/8/2024 as follows:

80. "There was no direct evidence of attack by the deceased on the accused, but the Investigating Officer PW11 reported that on his visit to the scene the same day, "there was evidence of struggle between the suspect and the deceased". The Court, therefore, gives the accused's version the benefit of doubt, even though there was evidence that he was beaten in a mob justice which may have occasioned the injury on his head. The defences of provocation and self-defence were, however, negated by the unnecessary, excessive and ferocious nature of the multiple injuries inflicted on the deceased. DNA evidence placed only the two at the scene, and there is no question that the accused occasioned the fatal injuries on the deceased.
81. The allegation by the Defence in re-examination that "the deceased was big-bodied [and] the deceased was holding me on the neck and she was lying on me and she was using a stone to hit me [and] I had no other way for rescuing myself" is not only unsupported by the photographic evidence of the size of the deceased (Pex. No. 3 (a) and (b)) but also by the impracticality of the deceased hitting him with a stone while she was strangling him on the neck.
82. In addition, it would not have been necessary to stab the deceased several times to rescue himself as evidenced by the multiple stabbings on the cheek, thigh, and back, apart from the cuts on the hand and arms which the accused says happened as they struggled with the deceased. The accused is not himself a man of small physical stature and, as a security officer, it not conceivable that he could easily have been subdued by an ordinary built person as the deceased.
83. If there was any attack from the deceased, as suggested by the evidence of the Investigating Officer PW11 that there were signs of struggle at the scene, the accused's response to it by brutal excessive force manifested in 5 deep stab wounds, which was unnecessary to ward off the attack, renders the technical defence of self-defence within the meaning of section 17 of the Penal Code unavailable to him.



84. In the accused's attack on the deceased, malice aforethought is demonstrated by the obvious knowledge of the accused who was a security officer that the multiple injuries he inflicted on the deceased with his dagger knife would probably cause death or grievous harm, and indifference whether it did, in terms of the definition of malice aforethought under section 206 of the Penal Code.
85. The attempt to take benefit from a duty of care upon the persons who responded to the attack to take the victim to hospital is a callous expression of his lack of remorse demonstrating his malicious indifference as to the result of his attack on the health of the victim.
86. On the evidence, the accused Patrick Naweet is guilty of the offence of Murder contrary to sections 203 and 204 of the Penal Code."

### **+Mitigation**

3. Mitigation by the Offender was presented by his counsel, Mr. Sandi, as follows:

"Mr. Sandi in mitigation

We have received the presentence and victim impact reports.

Pre-Sentence Report and victim Impact Statement dated 21/08/2024; Impact statement dated by Kamau Ngugi. Gazette notice dated 9/12/2005.

On behalf of Mr. Patrick Naweet we inform the court that he was a family man with a wife and 6 children ranging 1999-2000 and others in that order. He is a father of children with below age of 18.

Security guard sole breadwinner and the family depended on him. The wife is not employed and she is a house wife. Mr. Naweet provided for children in terms of all basic needs including shelter food and school.

We beseech the court to consider the provision of the children who depended on accused.

Mr. Naweet was a first offender. He has never been charged with a crime. It is unfortunate.

Having seen the Reports, we put it to court that Mr. Naweet is remorseful and has been remorseful before the court. He was subjected to mob-justice. He was taught a lesson. He was remorseful. It true life has been lost.

On behalf of Mr. Naweet, we beseech the court to be lenient. He did not intend to commit the crime. He did not plan to kill over a long time. It was a complaint on a parcel of land, which is emotive in our county. It is not a murder that was scheduled and executed out of his will. We pray for a jail term which is lenient that will serve as a lesson but not condemn him entirely.

During the defence of accused, we said he was a Turkana man. We used the point that his surrounding is not one of a schooled person Through this hearing, he has learned a life time experience. We pray for a favourable jail term."

4. In his own behalf, the accused said:

"Accused



I wish to say the court should forgive me as I have children who depend on me. I have learnt it was a mistake and I will not repeat the same. I pray for non-custodial sentence.”

5. For the DPP, Mr. Masila urged a death sentence as follows:

“Masila for DPP

On the process of the trial the courtroom has always been packed. Those were friends of deceased, her workmates, immediate family and different human rights organizations. The deceased only innocently attended a burial and the only person who knew that she was not going to see him next day is the accused before the court.

The deceased was a human right defender. In her work, they always demand change and at times, they put their lives at risk. They are advocates of human rights and their adversaries are always trying to silence voices by different means. One of which is through murder which happened in this case.

The convictee silenced a critical voice for the society. The only mistake that she did was to exercise her freedom of expression of speech. It was violated by the accused person.

Activation plays a critical role in holding the Government institutions accountable and also to ensure transparency. The deceased was a mirror of the society and they needed her more particularly at this time. The Court needs to take judicial notice of what is happening in the country. The clamor from the rights of the common person as long as an individual abides by *the constitution* in respect to the Bill of Rights, this court has the mandate to fearlessly guard those rights.

The right to life of the deceased was violated by the convictee.

The Muruatetu case in respect of sentencing has aggravating circumstances in this matter.

1. Deceased was a woman. Human Rights defender and she was honoured Government and she was honoured with H.S.C by Gazette Notice of 9/12/2005 No. 51 in the Civilian Division.

On the merits, to be conferred with such a medal one has to exhibit exemplary quality for the benefit of the society.

This is pursuant to Section 4 of the National Heroes Act 2013. That is the person the deceased was known for her exemplary and outstanding service to the nation.

PW5 was a minor and witnessed the happening. She was traumatized. It took the intervention of the victim’s counsel to procure her presence in court in order for the minor to gain confidence and testify against the accused.

PW5 could not even face the convictee.

The deceased had defensive wounds on her hands. She was trying to shield herself from the repeated attacks inflicted upon her by the convictee. It was horrific, agonizing, and she had nowhere to go or run from the forceful stabbing occasioned on her by the convictee.

The forceful stab attacks, There was even blood sputter on the shoes of the deceased. That is how forceful the attack was. The convictee conducted himself with flagrant disregard for sanctity of life and acted in a manner which is unacceptable in a civilized society. He dehumanized the deceased in the manner he executed the murder.



I rely on the Probation Officer's Report dated 3/9/2024, which detail the physical and psychological harm suffered by the victim.

The witnesses who were the children of the deceased are now orphans, with no one to take care of them. Their father passed on earlier, and they were looking upon the deceased for guidance and now they have no one because of the action of the convictee.

From the photographs and the exhibits which were presented before the court in respect to the deceased's clothes. They were full of blood. One cannot even tell in which color of the particular clothes that deceased wore.

The commission of the offence is a clear classical case of gender based violence.

On the sentencing, the court needs to consider the views of the convictee, victim's family and society at large.

On the victim's side, there is a Victim Impact Statement by one Francis Lebongo Ekeru dated 21/8/24. There is one from the Defenders' Coalition by Kamau Ngugi.

On the sentencing objectives - Sentencing Policy Guidelines - 2 objections stand out: To protection of the community and to denounce such acts from happening.

There is overwhelming need to protect the society. This court is to instill confidence to the public that if such an apparent issue happens the court will mete out an appropriate sentence. That is the reason we have mob-justice out there when the society feels that nothing will happen to the suspects when they are arraigned in court. A lenient sentence will be meted out. This is the appropriate case to instill confidence in the system of justice. Public needs to have confidence with system of justice. Submissions by the defence that the accused is remorseful. But for the Pre-sentence report on the circumstances of the case, the accused blamed his action due to drunkenness.

Is the accused remorseful or he just regrets having been caught in the commission of the offence. Remorsefulness can be seen during the trial and at the defence hearing of accused, with sense of bravado testifying to the effect that after fatally stabbing the deceased, he was expecting, waiting for the members of the public to take the deceased to hospital. He never did anything to save the life for deceased. He just stood there, watched until the deceased passed on. It was too late to save the life of the deceased. What has motivated his change of heart. Nothing has been said by defence.

No reconciliation effort has been offered or tendered towards the deceased's family as victim of the offence.

When accused was arraigned in this matter, we strongly opposed bond, because of the hostility on the ground. That is 2022. The ground is still hostile and I gather that from the Pre-sentence report. The ground is still hostile Three years down the line.

We need to protect the life of the convictee, and the only way to protect his life from vengeance of the society is by meting out way of a custodial sentence. The court should not be lenient. It should be a heavy sentence in the light of circumstances in which the accused committed his crime.

Does accused have change to be rehabilitated?

The answer is no. From the submissions by defence, he being a Turkana man and it has been ingrained in him that no woman should shout at him or differ with him and if and if they do they will suffer their consequences. That is not someone who can be rehabilitated. It is



his way of life. Therefore, the court should not release the convictee for an innocent person out there to suffer the same fate as the deceased. We need to guard the life of society more so women of this country.

Cultural effect urged is given on the appellant and not the entire Turkana Community.

DPP instructs me to pray for a death sentence.”

6. Counsel watching brief for the family of the Deceased associated himself with the submissions for the DPP.
7. In reply, Counsel for the accused, Mr. Sandi, emphasized that:

“Mr. Sandi in reply

It was not the accused defence that he was drunk. During the defence he claimed that he was attacked and he was self-defending himself.

No proof in evidence that Mr. Naweet cannot learn as he was not clear. State should have asked for a report from prison as to his conduct. He is a first offender and he has nothing against women. It was an issue against the land dispute.

Death sentence is most severe punishment. It is not a fair sentence. This court faces other cases where death sentence is appropriate.

He has been subjected to mob justice. Our courts are fair and people should be taught to bring suspects to court which are fair.

Mr. Naweet should be given benefit of doubt.”

### **Pre-sentence report**

8. Probation Officer’s pre-sentencing report of 3/9/2024 found the accused unsuitable for non-custodial sentence as follows:

“Summary/Findings

Your Lordship, before this court is a 50 year old offender who is a family man of six children some of whom are school going. He is an abuser of alcohol and committed the offence under the influence of the same. He takes responsibility of the offence and regrets his action. His family members regarded him as a responsible father and pleaded with the court to give him a second chance by placing him on a non-custodial sentence. They are willing to initiate reconciliation with the victim’s family.

He killed the victim by stabbing with a knife after a disagreement. No reconciliation or attempt has ever taken place and the victim’s family is very bitter for the same. The victim had lost her husband through banditry attack and while in the state of mourning, the victim was killed leaving them as orphans. This led to high emotions, anger and bitterness among the victim’s relatives.

They are not ready for any reconciliation and request the court to severely punish the offender.

The local chief regarded the offender as a dangerous criminal. She informed this social enquiry that she has severally summoned him in her office in relation to different crimes he



was associated with in the community. She is of the fear that he may face the wrath of the community if released on a non-custodial sentence.

Recommendation

Considering the above findings, I am reluctant to recommend a non-custodial sentence.

Charles R. Kanga

Probation Officer

Meru

3/9/2024”

### **Victim Impact Statement**

9. The victim impact statement dated 21st August 2024 was delivered by the accused deceased’s brother, Francis Lobongo Ekaru, principally confirming the deceased as a mother of five children and community justice defender and a beacon of hope who had won accolades including Head of State Commendation by President Mwai Kibaki in 2005, as follows:

“As we struggle to care for our own young families, it has become nearly impossible to balance life for Elizabeth’s five children and our extended family. We are trying to ensure they have the support they need to continue the life they were used to when Elizabeth was alive, but it is not easy.

Painfully, we have watched the accused attend court with no remorse, in his utterances and actions, adding to the immeasurable pain and suffering endured on the family, especially the children. They have been robbed of their childhood, their safety, and the guiding hand of a mother who dedicated her life to protecting others.

The only solace we have had is the pursuit of justice for our late sister. We pray for justice for Elizabeth Ibrahim Ekaru Etaan, to bring relief to our family and to show the community that justice is possible.

Your Honor, the impact of this crime is profound and far-reaching. The accused’s lack of remorse only deepens the wound inflicted upon us. We ask that the court consider the gravity of this loss and the lasting negative impact it has on the lives of Elizabeth’s children and our larger family. Justice should be served, not only for the sake of Elizabeth Ibrahim Ekaru Etaan but for the future of her children, the principles she stood for, and to assure the community that justice is possible.

Name: Francis Lobongo Ekaru.

Signed

Date: 21st August 2024.

10. A further victim impact statement was made by the National Coalition of Human Rights Defenders in Kenya as follows:

“Conclusion

The Defenders Coalition urges the court, in determining the appropriate sentence, to consider the impact analyzed herein. It is crucial that the court’s decision reflects the gravity of the matter and sets a good precedence for human rights activism and gender issues. A



sentence that takes into account the psychological impact suffered by family, friends and larger community of human rights activists. The sentence should also consider the fact that this is not an isolated incident, but a reflection of the underlying issue of societal and systemic issue of condoning violence against women and all the murders of many women human rights defenders whose murder have never faced the justice system. The court, in so doing, will set a good precedence on matters of Human Right activism and on issues of Gender Based Violence.

Signed

Kamau Ngugi.”

### **Appropriate Sentence**

11. The Court has considered the mitigation by the offender and submissions of counsel for the parties. I do not agree that the circumstance of this case are so aggravated as to call for the death sentence, the maximum penalty for the offence of murder. The Court has considered the breadwinner status of the accused against the complete orphanage that his action occasioned on the five children of the deceased who had earlier lost their father to banditry.
12. On the whole, guided by the various objectives of Sentencing, the circumstances of the offence warrant a custodial sentence and indeed, being cognisant of this fact, Counsel for the accused only sought a lenient jail term saying “We pray for a jail term which is lenient that will serve as a lesson but not condemn him entirely.”
13. The appropriate sentence in this matter must be one which communicates to the offender and others that assaulting to kill a neighbour, male or female, with whom one has a land boundary dispute is abhorrent and contrary to all principles of civilized modern living consistent with an open society based on the Rule of Law and respect for human dignity, human rights, as recited in Article 10 of our Constitution; that respect for human life and dignity requires resolution of disputes in a civilized manner where each has an opportunity to be heard towards determination of the disputes in accordance with *the Constitution* and the law; and that it does not pay to take matters in his own hands, to see the personification of the dispute in the neighbour and seek to remove the obstacle of the dispute by her elimination. The appropriate sentence must be a deterrent sentence which also reflects the denunciation of the heinous criminal conduct.
14. The objective of reformation is a standard ingredient in all modern sentences and the court must, in fostering the reformation of the accused, also consider that a custodial sentence permits the reformation through prison discipline and economic/social training and activities available in prison penal programmes.
15. The Court would also observe that from the submission by Counsel for the Prosecution that the offender should be held in custody for his own protection is not idle. The court recalls the packed court room hearings indicating the great interest of the community members to see justice is done for their deceased community leader as well as the mob-justice meted on the accused immediately after the incident before he was saved by the police officers upon arrest.
16. The fact that the deceased victim was well known strong crusader for social rights and social development and women rights activist, and her senseless killing has deprived the Community of an accomplished leader and mentor. So much was the anger over the killing of the deceased that the members of the Community sought to lynch the accused who had to be rescued from the mob justice by the police. For the Communities protection from any possible retaliatory attacks from the accused, it is warranted to hold the offender in prison custody.



17. In addition, in his final submissions before judgment, Counsel for the accused, voiced clear gender biased overtones in the submission that sought to excuse the assault on the deceased on the contention that the accused had attacked her, while the two quarreled over the land boundary, in self-defence and under extreme provocation of the terrible horror of being slapped by a woman, something that a Turkana could not countenance! The Court must in any small way communicate that sexual and gender based violence has no place in civilized world!
18. The court considers that a sentence of imprisonment for thirty (30) years which ensures that the accused is in prison custody for deterrence, reformation and community protection objectives for a period not less than twenty years, remission applied.

### **Orders**

19. Accordingly, for the reasons set out above, having convicted the accused for the offence of murder contrary to sections 203 and 204 of the Penal Code, the Court now sentences the offender to imprisonment for a period of thirty (30) years.
20. Pursuant to section 333 (2) Proviso of the Criminal Procedure Code, the sentence of thirty (30) years shall commence on 17/1/2022, the date the accused was arraigned in court and remanded to await his trial.

Order accordingly.

**DATED AND DELIVERED THIS 24<sup>TH</sup> DAY OF OCTOBER, 2024.**

**EDWARD M. MURIITHI**

**JUDGE**

APPEARANCES:

Mr. Sandi for the Accused.

Mr. Masila for the DPP.

Ms. Kombo with Mr. Makori watching brief for the family of the deceased.

