



**Republic v Kelvin & another (Criminal Case 1 of 2017)
[2023] KEHC 698 (KLR) (9 February 2023) (Sentence)**

Neutral citation: [2023] KEHC 698 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 1 OF 2017
MM KASANGO, J
FEBRUARY 9, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

LOHORERE KELVIN 1ST ACCUSED

MUKOOLI JACKSON 2ND ACCUSED

SENTENCE

1. Lohorere Kelvin, (hereafter Kelvin) and Mukooli Jackson (hereafter Jackson) were by the judgment of this Court on 31st October, 2022 convicted of the offence of murder.

Facts

2. Kelvin and Jackson were employed as herdsmen whereby they looked after and milked cattle at Komothai farm in Kiambu County. When the offence they were convicted of on 6th December 2016 occurred, they had been employed for a few months. They resided on the said farm during their employment together with Mailu Meli Wambua (deceased). The deceased was a guard on the said farm. By this Court’s judgment of 31st October, 2022, it was found that Kelvin and Jackson attacked and killed the deceased in order to have an opportunity to break and steal from the farm house that deceased was guarding.
3. The deceased suffered extensive horrific injuries. The post-mortem report noted the following injuries that the deceased suffered:-

“ Multiple deep cuts on the right side of the neck, and head.

The right ear has multiple cuts.

Right temporal bone fractured.



Facial bones on the right side fractured.
Right mandible fractured.
Right carotid and jugular blood vessels.
Fractured cervical spine (C1-C3) and transected cervical spine.
Crusted blood on the face and scalp.
Cut wounds (defence wounds) on the right fore arm 4 cm long.
Multiple abrasions on the anterior chest and abdomen and on face.”

4. Both Kelvin and Jackson are first time offenders.
5. Kelvin in his mitigation prayed that this Court does forgive him and requested for mercy in sentencing him. He stated he is 24 years old. He prayed for non-custodial sentence. He requested the court to agree to be addressed by his sister, who he said had travelled from Uganda.
6. His sister, Justine Sylvia Namakoye stated that their mother who was already sickly was devastated by the arrest of Kelvin. Their mother is 50 years old. Their mother sent her with a message that mercy be shown to Kelvin by giving him a non-custodial sentence.
7. Jackson in mitigation stated that he came from Uganda to Kenya in search of employment. He left behind his wife who was then expectant. He later learnt she gave birth to a son. The wife deserted their home after his arrest over this offence and that son is now being cared for by his brother. Jackson said that he had not seen his son who is now 6 years old since birth.
8. In passing sentence today, I have considered that both Kelvin and Jackson committed a horrific and heinous crime. The deceased in no way deserved the fate that befell him. The crime Kelvin and Jackson committed shows they valued the items of property they hoped to steal from the farm house over and above the deceased life. The sentence passed today shall balance between deterrence, rehabilitation, retribution and denunciation of the crime. A sentence must be proportionate to the gravity of the offence and the degree of offender. The judgment of this Court was that both Kelvin and Jackson acted together in attacking and killing the deceased.
9. It is useful to bear in mind the Canadian decision, which I find very persuasive of *R. vs. Person* 2002 NBQB 218 (CanLII) as follows:-

“... sentencing is the public pronouncement of punishment administered by the authority of the court as trustee of the public’s confidence. It ought to be imposed in a way that applies the rule of law, tempered with justice, administered with the knowledge, good conscience, instincts and experience of the judge and guided where appropriate by persuasive or binding precedent. In my view, the essential purpose of sentencing is to maintain respect for the law by which society chooses to regulate itself, thereby ensuring the peaceful enjoyment, order and safety of its citizens. The community expects the court to enforce its standards, to denounce unlawful conduct and to deal firmly but fairly with those persons convicted of crime. In determining a fit and proper sentencing, well-recognized principles have come to be applied in this jurisdiction. The primary consideration is always protection of the public. In addressing that primary concern, the sentencing judge is obliged to ask whether such protection may best be achieved by specific deterrence of the offender, general deterrence of those similarly disposed, rehabilitation of the offender, or some combination thereof.”



10. Kelvin is 24 years old while Jackson is 28 years old. The tragedy of the deceased's death is compounded by the fact that he left behind his wife and son and other relatives. These are members of deceased's family forced to live without his love care and protection. There is no sentence that will seem sufficient to deal with the loss the deceased's family suffered.

Conclusion

11. With respect to this Court's conviction of Lohorere Kelvin And Mukooli Jackson of the murder of Mailu Meli Wambua, deceased I hereby sentence both of them to serve 25 years imprisonment. Both of them shall be given credit of 6 (six) years of that sentence.

RULING DATED AND DELIVERED AT KIAMBU THIS 9TH DAY OF FEBRUARY, 2023.

MARY KASANGO

JUDGE

In the presence of :-

Coram:

Court Assistant : Mourice/Julia

For DPP :-

Lohorere Kelvin -1st accused - Present

Mukooli Jackson - 2nd Accused – Present

For 1st accused Lohorere Kelvin:- N/A

For 2nd Accused Mukooli Jackson:- N/A

Instructed by DPP:- Mr. Gacharia

RULING delivered virtually.

MARY KASANGO

JUDGE

