



**Republic v Irungu (Criminal Case 16 of 2018)
[2023] KEHC 1977 (KLR) (13 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1977 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL CASE 16 OF 2018
CM KARIUKI, J
MARCH 13, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

PAUL KAMAU IRUNGU ACCUSED

RULING

1. The Accused was charged with Murder Contrary to section 203 as read with section 204 of the [Penal Code](#).
2. Particulars being that between the night of 23rd and 24th September 2018 at Kongoni village in Nyahururu Sub-County in Laikipia County, Murdered Pennina Wanja Njoki.
3. He pleaded not guilty and after trial he was convicted.
4. The matter is now on sentencing stage.
5. The Prosecution reported to court that accused is a first offender. In mitigation filed by the defence Advocate the same is to the effect that; That the offender was the sole bread winner of his five (5) children He is remorseful over the death of the deceased. Five years in custody is punitive enough and the accused/offender appreciates the gravity of his actions.
6. The Probation Care Report is stated that; The offender is a middle-aged man who relied on artisan work to eke his living. He is a semi-literate person who possesses some technical skills acquired before detention. He is a first offender. He maintains his innocence in the matter but was convicted after a fair trial process. Members of his family regard him well and prayed for lenience. The community is unwilling to receive him and participate in his rehabilitation process and is perceived as threat. The secondary victims were in fear of the accused person and his family members and his family and prayed for a custodial sanction.



7. Proposed Interventions by same reports;
 - a. Institutionalization of the offender to allow for the following interventions; Economic empowerment Guidance and counselling on responsible living with society Counselling on anger management.
8. And finally, Recommendations made; An appropriate sentence and recommended that court considers secondary victim's concerns, the offender attitude towards the offence and the circumstances of the offence. He has also spent five (5) years in remand custody.
9. The objectives of sentencing are: To punish the offender for his or her criminal conduct in a just manner. To deter the offender from committing a similar offence as well as to discourage other people from committing similar offences. To enable the offender reform from his criminal behaviour and become a law abiding.
10. Types of Sentences In Kenya. Sentencing is the process by which a court imposes a penal sanction once an accused person has pleaded guilty or has been convicted of an offence following a trial. There are two major categories of sentences: 1. Custodial sentence 2. Non- custodial sentence.
11. Custodial sentence is a judicial sentence, imposing a punishment consisting of mandatory custody of the convict, either in prison or in some closed therapeutic or educational institution such as a reformatory, psychiatry or drug detoxification. Custodial sentence requires the suspension of an individual's liberty and the assumption of responsibility over the individual by another body or institution. On the other hand, Non- Custodial sentence is a punishment given by a court of law that does not involve a prison term.
12. The objectives of sentencing are : 1. To punish the offender for his or her criminal conduct in a just manner. 2. To deter the offender from committing a similar offence as well as to discourage other people from committing similar offences. 3. To enable the offender reform from his criminal behaviour and become a law abiding 4. To protect the community by incapacitating the offender. 5. To express the community's condemnation of the criminal conduct 6. To restore justice by addressing the needs arising from the criminal conduct such as loss and damages.
13. Among penal sanctions recognized in Kenya: death penalty in offence such as murder. In determining a proper sentence, the court considers among others; The intrinsic value of the subject matter. Antecedents of the accused. Age. Conduct of the accused at trial. Prevalence of the particular crime in society. Whether or not the offender is a first offender
14. The general rule is that a maximum sentence should not be imposed on a first offender. Death penalty *vide* Petition 15 & 16 of 2015; Parties: *Muruatetu & another v Republic; Katiba Institute & 4 others (Amicus Curiae)* is a maximum sentence in capital offences case such as murder.
15. The facts on how victim was killed is said and court accepted as proved that accused used a stick to assault the deceased and also strangled her, and also stepped on her chest. He repeatedly assaulted the deceased with a stick and when it got finished got another one and continued assaulting her from 8:00 PM until 3:00 AM and stepping on her chest. The doctor confirmed the cause of death in the post-mortem report as subdural haematoma following severe head injury which is consistent with the beating she received on her head and strangulation.
16. This demonstrates the brutality visited to the victim despite her being said to be drunk and not even fighting back. No justification has been raised but accused still insists he is innocent thus no remorse.



17. Having considered the aforementioned factors among others, the court proceeds to sentence and make orders –

- i. The accused will serve a sentence of 30 years imprisonment from dates herein.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 13th DAY OF MARCH ,2023.

CHARLES KARIUKI

JUDGE

