



**Republic v Kimotho (Criminal Case 13 of 2020)
[2023] KEHC 1679 (KLR) (1 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1679 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL CASE 13 OF 2020
GL NZIOKA, J
MARCH 1, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

BEATRICE MWENDE KIMOTHO ACCUSED

JUDGMENT

1. The accused is charged with the offences of murder contrary to section 203 as read together with section 204 of *Penal Code* in four counts. The particulars of each count are as per the charge sheet.
2. She pleaded not guilty to the charges and the case was set down for hearing. The prosecution called two witnesses; PW1 Jackson Kimani and PW2 Alice Wanjiru. However, on October 31, 2022 she opted to change her plea.
3. The charges were read out to her and she pleaded guilty to all four counts. The facts were read out and she confirmed that they were correct. She was then convicted on her on plea of guilty.
4. The prosecution informed the court that she has no previous record of conviction, thus she is a first offender. The accused did not offer any mitigation as her defence counsel informed the court she did not wish to offer any mitigation.
5. The court then ordered for a pre-sentence report and a report dated February 13, 2023, was availed. It indicates that the accused was the sixth born in a family of fifteen (15) siblings although three (3) are deceased. That, after completing her "O" level and scoring a B+, she joined the University of Nairobi for a Bachelor degree in Commerce in 2000 but did not complete as she left while in the third year, and joined Laikipia University for a Bachelor of Education. She completed her degree course but she has not graduated due to fee balance.



6. That, she started working in the year 2003 and has served as a Senior teacher, Deputy principal, Principal, and Senior principal in various schools as detailed out in the report. She has also worked in various Non-Governmental Organizations, including Generation Kenya Guru Foundation as a Regional Co-ordinator at Naivasha Sub-County, before she was laid off due the Covid-19 Pandemic.
7. The report further indicates that, she got married immediately after secondary school and was blessed with one child although the marriage lasted for one year only. That while at the University she got into another relationship and got another child. In the year 2012, she got married to the father of the victims, however, they later separated.
8. That, prior to her arrest she was in another relationship. In total, the accused sired six (6) children. That, the first born is currently studying electrical engineering being supported by his biological father, while the second born is currently in class 7 and is being supported by her sister. The other four children were the victims of the offence.
9. On being interviewed the accused stated that she is asthmatic and has challenges when exposed to the cold. On the circumstances of the offence, she stated that a spiritual force pushed her to kill her children and that, it gave her strength and encouraged her to continue killing one after the other until she killed all four (4) children. That, her deceased children deserved justice and it can only be achieved if she serves a custodial sentence.
10. In addition, the report indicates that the community is apprehensive on her release due to the fear that she can kill another person and recommends she be accorded the maximum sentence, although the local administration stated that she has no history of misconduct.
11. Similarly, her family stated that, they want justice for the victims. The accused declined to give the contacts of the father of the deceased children and stated that she did not want him to be involved as they had separated. The pre-sentence report did not make any recommendation and left the matter to the court as it deems fit.
12. I have considered the matter in the light of the materials before the court and I find that, indeed the accused has been charged with serious offences as evidenced by the sentence of death provided for it. Further although she changed her plea and saved court's time, she did not offer any mitigation and she prefers to pay for the crimes.
13. However, whatever the case, the objective of sentence should be considered and in that regard, clause 4.1 of the *Judiciary Sentencing Policy Guidelines* lists the objectives of sentencing as:
 - a. Retribution: To punish the offender for his/her criminal conduct in a just manner.
 - b. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - c. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
 - d. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
 - e. Community protection: To protect the community by incapacitating the offender.
 - f. Denunciation: To communicate the community's condemnation of the criminal conduct.



14. Furthermore, the Supreme Court of Kenya in *Muruatetu & another v Republic; Katiba Institute & 4 others (Amicus Curiae)* (Petition 15 & 16 of 2015) [2021] KESC 31 (KLR) (6 July 2021) (Directions), set out guidelines to assist the court in considering the sentence to be meted out in murder cases. The court stated as follows: -

“In re-hearing sentence for the charge of murder, both aggravating and mitigating factors such as the following, will guide the court;

- (a) Age of the offender;
- (b) Being a first offender;
- (c) Whether the offender pleaded guilty;
- (d) Character and record of the offender;
- (e) Commission of the offence in response to gender-based violence;
- (f) The manner in which the offence was committed on the victim;
- (g) The physical and psychological effect of the offence on the victim’s family;
- (h) Remorsefulness of the offender;
- (i) The possibility of reform and social re-adaptation of the offender;
- (j) Any other factor that the court considers relevant.”

15. To revert back to the subject matter herein, it is puzzling how the accused perceives the offences she has committed. Her general conduct leads to “suspicion” of a person who may be under influence of “something” which is not perceivable.

16. However, the court record indicates that prior to commencement of the trial she went through a mental assessment test and found to be mentally fit to plead and participate in the trial. There is no evidence of change in that state and neither is she on any treatment for a mental illness.

17. Pursuant from the aforesaid, it is clear that this is not an appropriate case for a non-custodial sentence and given her attitude towards the offence, I believe she is better off the society for a relatively long time and even for her own mental state. Finally, the poor innocent souls that lost their lives in the cruel hands of the accused deserve justice.

18. I therefore sentence the accused to life imprisonment on each of the four counts, however, in view of the fact that the sentence cannot be served consecutively nor concurrently, the sentence of life imprisonment on the first count will be served while the sentence on the other counts will be held in abeyance.

19. However, should the matter be subject to a further hearing and determination in a court of higher jurisdiction, then depending on the findings, the sentence held in abeyance will be dealt with.

20. That is the order of the court and the accused is notified of her right of appeal in 14 days.

DATED, DELIVERED AND SIGNED THIS 1ST DAY OF MARCH 2023.

GRACE L. NZIOKA

JUDGE



In presence of:

Mr Atika for the State

Mr Karanja for the Accused

Ms Ogutu: Court Assistant

