



Rasi v State (Criminal Case 36 of 2015) [2023] KEHC 17851 (KLR) (10 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17851 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE 36 OF 2015
DO CHEPKWONY, J
MAY 10, 2023**

BETWEEN

RASI MRIPHE RASI ACCUSED

AND

STATE PROSECUTOR

RULING

1. The accused person is charged with the offence of where by the offence of Murder he is alleged to have murdered Mriphe Rase Mangaze, the deceased herein. The accused was arrested, charged and tried for this offence whereby he was found guilty and convicted. To determine the sentence to be meted for the accused, the matter was referred to the Probation Officer for a Social Inquiry to be conducted on him and a Pre-sentence Report filed. The Social Inquiry was conducted by Mutisya Kioko, the Probation Officer who prepared and filed a Pre-sentence Report dated April 18, 2023. The sentencing process involves a court balancing the rights of those involved in the Criminal justice system and protection of the rights of the community. The courts are expected to impose sentences that are just, appropriate and commensurate to the nature and circumstances of each case, while at the same time ensuring that small sentences apply to similar offences.
2. Section 24 of the *Penal Code* contemplates a list of punishment that a court may impose, and by the very use of the word “may” implies the discretionary power of a Judicial Officer in sentencing except for cases which provide for either minimum and or maximum sentences or fines, depending on the nature of crime, records (character) of the accused social and economic background of the accused, public interest, victim’s impact, among other factors. There are also cases which provide for mandatory sentence. The offence of Murder, which is what the accused herein is charged with is one of the few which carry a mandatory death sentence as a penalty in Kenya. However, there has been a departure from this by the courts in this jurisdiction arising out of the Supreme Court’s decision in the case of *Francis Muruatetu & Another vs Republic* [2017]eKLR, which found that the mandatory nature of the death penalty as provided for under Section 204 of the *Penal Code* was unconstitutional in the sense that whether or not one is convicted, they should be heard. The Supreme Court felt that a person



facing a death sentence deserves to be heard in mitigation as an important cognizant element of fair trial because of the finality of the sentence and appropriate sentence to be imposed. In finding so, the Supreme Court had this to state:-

“We now lay to rest the quagmire that has plagued the court with regard to the mandatory nature of Section 204 of the Penal Code. We do this by determining that any court dealing with the offence of Murder is allowed to exercise judicial discretion by considering any mitigating factors in sentencing an accused person charged with and found guilty of that offence. To do otherwise, will render a trial with the resulting sentence under Section 204 of the *Penal Code* unfair thereby conflicting with Articles 25(c), 28, 48 and 50(1) and (2) of the *Constitution*.”

3. There is also the Judiciary Sentencing Policy Guidelines where at Page 15, the objectives of sentencing are captured as follows:-
 1. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 2. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offence.
 3. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law abiding person.
 4. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
 5. Community protection: to protect the community by incapacitating the offender.
 6. Denunciation: to communicate the community’s condemnation of the criminal conduct.
4. It also captures the factors to be taken into consideration by a court in determining whether or not to impose a custodial or non-custodial sentence, which are:-
 - a. Gravity of the offence.
 - b. Criminal history of the offender.
 - c. Character of the offender.
 - d. Protection of the community.
 - e. Offender’s responsibility to the third parties.
 - f. Children in conflict with the law.
5. In the Muruatetu case, these guidelines were amended to include:-
 - 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 offender in response to gender-based violence;
 - f. The possibility of reform and social re-adaptation of the offender;



- g. Any other factor that the court considers relevant.
6. In compliance with all these, this Court called for a Social Inquiry to be conducted on the accused person and Pre-sentence Report has been presented to court, wherein the circumstances of the offence, the accused person economic and social status, victim impact statement and community's hand have been presented together with the recommendation of the Probation Officer on what punishment the accused person should be considered for.
 7. This Court has listened to the prosecution in regard to the accused person's records, and the accused person's mitigation as presented by his counsel. I have also read through the Pre-sentence Report on him dated April 18, 2023. Briefly, it has clearly come out that the accused is a son to the deceased, where death was caused as a result of anger the accused had been harbouring against him for the loss of academic certificates, a result of which he cannot secure an employment and hence feels useless.
 8. This court has taken into consideration the circumstances under which the offence was committed, the records of the accused person, mitigation statement by the accused person, the relationship between the accused person and victims in this case alongside the recommendation by the Probation Officer after conducting a Social Inquiry on the accused person. The court also appreciates the accused the accused has been in custody since his arrest, eight (8) years ago. In appreciating all these factors, the proportionality doctrine, it is this Court's considered opinion that a sentence that will achieve reform and social re-adaptation of the accused person be meted out against the accused person.
 9. The accused person is thus placed on Probation for a period of three (3) years. The State has a right to appeal on the sentence.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 10TH DAY OF MAY 2023.

D.O CHEPKWONY

JUDGE

In the presence of:

M/S Valerie counsel for the State

M/S Odhiang counsel for the accused

Accused – present

Court Assistant – Martin/Hamisi

