



Republic v Mudanya (Criminal Case 22 of 2017) [2023] KEHC 3889 (KLR) (2 May 2023) (Ruling)

Neutral citation: [2023] KEHC 3889 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 22 OF 2017
MM KASANGO, J
MAY 2, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

JACOB ASWANI MUDANYA ACCUSED

RULING

1. Jacob Aswani Mudanya was convicted by this court on March 10, 2023 with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). This court by this Ruling will determine the fit and proper sentence for that offence.

Background

2. On the night in question the convict had gone to the shop/café situated down stairs to his apartment. Those who saw him noted he was very agitated. He had a hockey stick in his hand. Although he was asked why he was agitated, by the owner of that shop the convict did not respond to the inquiry and he left. The shop owner and those that were with him thereafter saw stones being thrown to the shop by the convict. The deceased and the others who were residents of the apartments above the shop arrived from a night out at that shop. As they were there the convict came and stabbed the deceased and one other person with the deceased. The other person survived but the deceased died after being taken to hospital. The prosecution proved that the stabbing of the deceased by the convict was unprovoked. The convict hereof and the deceased did not know each other prior to this stabbing incident.

Analysis

3. The convict through his Learned Counsel Mr. Njehu stated in mitigation that while he has been in custody he underwent counselling and anger management course. The convict in personally mitigation stated that he was remorseful and sought the Court to give him a lenient sentence.



4. It needs to be stated that the deceased was a 23 years old University student. He was stabbed by the convict as he was in an evening out with his friends, one of whom was also stabbed by the convict, though not fatally. The killing of the deceased must have impacted many people and in particular his parents who obviously looked forward to him completing his university studies and they must have had hope for a bright future for him. Deceased died tragic death for unexplained reasons. The convict did not in his mitigation explain what prompted him to do such an unlawful act of stabbing the deceased; and much more why he stabbed a total stranger, the deceased.
5. I had the opportunity to observe the convict when he addressed me in mitigation. I noted that although convict stated that he was remorseful, that statement in my view was shallow and not heartfelt. This was compared to his address on the achievements he has made while in custody. This was epitomized by his statement, "...but we cannot cry over spilled milk," while talking of the death of the deceased.
6. The convict spent a considerable time, while addressing me, talking of his entrepreneurship gifting. He talked about his intentions such as converting a plastic ball into a flat surfaced object with multiple uses. He also said that he is an author of many books.
7. I take note that the convict has successfully undertaken training in Mindful Leadership Personal Development Programs and obtained a certificate of merit in reading and writing Arabic Language.
8. The purpose of sentencing is to contribute to the respect for law, maintain a just peaceful and safe society and also to suppress future crime. The object of sentencing is to denounce unlawful conduct; deter the offender; and to send a message to the public that the behavior witnessed in this case is not to be tolerated.
9. The convict committed a horrendous crime. One of the prosecution's witnesses, Susan Mutheu Masika described the deceased after he had been stabbed by the convict as follows:-

"Deceased was bleeding with intestines hanging out. I saw the accused (the convict) stab the deceased."
10. The convict in stabbing the deceased had absolutely no compassion for life. The killing of the deceased was unspeakable selfish act of violence, the stabbing of the deceased will be denounced by this Court and the sentence of this Court will reflect that denunciation and it must deter not only the convict but also others from committing such a crime. The sentence will also be geared at rehabilitating the convict.
11. Finally I wish to state to the convict that he needs to make genuine effort to acquire insight into the enormity of what he did. He needs to realize he senselessly took away the life of the deceased, a 23 years old young man. I did not get the impression the convict appreciated the error of what he had done.

Disposition

12. I have considered the mitigation made by and on behalf of the convict. I have also considered that the aggravating factor of this case which is that the convict stabbed the deceased, a total stranger to him for no known reason. Accordingly, the appropriate sentence is one of 40(Forty) years imprisonment.
13. I hereby sentence Jacob Aswani Mudanya to serve 40 (Forty) years imprisonment for the murder of Jackson Gathitu (deceased). In calculating that sentence of Jacob Aswani Mudanya the prison authority shall give credit of 5 years and 10 months which is the period he was held in custody awaiting the conclusion of the trial.

RULING DATE AND DELIVERED AT KIAMBU THIS 2ND DAY OF MAY, 2023.



MARY KASANGO

JUDGE

In the presence of:

Coram

Mourice/Julia: - Court Assistants

Convict (Jackob Aswani Mudanya):-Present

Mr. Njehu for Convict:- Present

Mr. Gacharia for the State:- Present

Court

Ruling delivered virtually.

MARY KASANGO

JUDGE

