



Republic v Muigai (Criminal Case 3 of 2017) [2023] KEHC 3615 (KLR) (2 May 2023) (Ruling)

Neutral citation: [2023] KEHC 3615 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 3 OF 2017
MM KASANGO, J
MAY 2, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

SAMUEL MUIRURI MUIGAI ACCUSED

RULING

1. On 10th March 2023 Samuel Muiruri Muigai was convicted by this Court of the offence of murder. Having convicted him this Court now shall determine the sentence the convict shall serve.

Background

2. The convict was convicted of murdering his brother in law. The incriminating evidence against the convict was adduced by his close family members. That evidence is indeed sad and also sordid. The convict lived with his widowed mother together with other siblings.
3. On material day the convict as he often did was abusing his mother. As he did so, he was shouting vulgar abusive words with sexual overtone. The convict’s sister, Ruth and her husband, the deceased, and their two children had visited that homestead. The other sister of the convict, namely, Grace questioned the accused why he was abusing their mother. The convict responded by attempting to cut Grace with a “panga” which he had in his hand. The deceased requested the convict not to fight. This Court by its judgment set out how the convict responded to the deceased, thus:-

“ 12. All the witnesses were unanimous in their evidence that the accused did not reply the deceased but he, the accused, bent down and took up an axe and hit the deceased with it on the head. He hit him using the blunt side. On hitting the deceased, deceased fell down and everyone ran into the house out of fear of the accused’s rage. The accused was seen dragging the deceased’s body. There was blood on the ground where the deceased lay.



13. Police and Chief were called and when they arrived, the accused had disappeared.
 14. Although the deceased was taken to hospital, he was pronounced dead on arrival. The postmortem report noted that the cause of deceased's death was massive subdural hematoma due to blunt force consistent with the blow to the head with a blunt object"
4. The prosecution's evidence revealed that the convict was feared by members of his family due to his violent outbursts, such as the one which occurred on the day in question. It is because of that fear that the family members that were present when the convict attacked the deceased ran into the house and locked themselves in that house. It was through the window of that house they observed the convict dragging the deceased, after striking him with an axe. The family members only got out of the house when the Chief and Police Officers came into the homestead.

Analysis

5. The convict has no previous convictions. His learned counsel Mr. Juma, in mitigation stated that the convict was remorseful and he sought that he be given a Lenient sentence.
6. I have considered those mitigation. The principles of sentencing are deterrence, and rehabilitation denunciation. In my view while considering the appropriate sentence of the convict a greater weight ought to be the denunciation of the crime the convict was convicted of and deterrence. The convict murdered his brother in-law in cold blood. He had no compassion for life as he struck the deceased with an axe. The fact that the genesis of what led to the death of the deceased was the convict's abuse of his mother speaks of his character and moral blame worthiness. In my view whatever sentence this Court will order the convict to serve will not make the pain of the family of the deceased any less. In determining the fit sentence, I will be guided by the holding of a Canadian case, namely *R v Person* 2002 NBQB218 (CANL11) 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.”

Disposition

7. Samuel Muiruri Muigai is hereby sentenced to prison sentence of 60 (sixty) years for the murder of Thomas Njoroge (deceased). The prison authority shall give Samuel Muiruri Muigai credit of 6 (six) years to that sentence being the period he was remanded in custody while his trial progressed.

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



MARY KASANGO,

JUDGE

Coram

In the presence of:

Mourice/Julia – Court Assistants

Convict (Samuel Muiruri Muigai):

Mr. Juma for Convict:- present

Mr. Gacharia for the State:- Present

Court

Ruling delivered virtually.

MARY KASANGO

JUDGE

