



Republic v Munjalu (Criminal Case 40 of 2017) [2023] KEHC 3890 (KLR) (2 May 2023) (Ruling)

Neutral citation: [2023] KEHC 3890 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 40 OF 2017
MM KASANGO, J
MAY 2, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

EDWARD MOI MUNJALU ACCUSED

RULING

1. Edward Moi Munjalu was today convicted of the murder of William Kimani Mwangi (deceased). Edward at the time of committing the said murder, on 27th August 2017 he was a serving police officer attached at Tigoni police station.

Facts

2. The factual background of the case is that Edward and the deceased were in a bar/restaurant called U-Turn on the material night. The deceased was in the company of his friend George Mbui Njuguna. They were having some alcoholic drinks. Edward arrived with his companion called Paul, at the same club. Sometime later, Edward and Paul sat close-by to George and the deceased. George purchased four alcoholic drinks, two for himself and two for the deceased. Paul took George’s drink, opened it and proceeded to drink it. This seems to have annoyed George who insisted that Paul should pay for that drink. That was the genesis of confrontation between George and Paul. Edward joined in the fracas to assist Paul. Other revellers joined in. the bouncer ejected both Edward and Paul. Edward was hurt in that fracas, he had laceration on his forehead. That fracas created bad blood on the part of Edward and his friend Paul. Paul was heard by George making a phone call to someone. Paul while making that phone call, was heard requesting for back-up. That is to mean Paul was asking someone to bring reinforcement to the bar. One of the waitress warned the deceased not to leave the club because there were threats by those who were ejected from the club by the bouncer. The deceased did not heed that warning. He left the bar and went to his car. As he reversed out of the parking Edward using his officially issued pistol shot the deceased seven times. The deceased died from his wound.



3. There is no doubt that Edward shot the deceased as a personal vendetta. When the fracas died down Edward was heard to say he knew who had injured him and he proceeded to ask around the bar “who is Willie” (the deceased). It was because of those threatening statements that the waitress warned the deceased not to leave the club.

4. Edwards use of the pistol was unlawful not only because it resulted in the death of a man but that it was against the provisions of the Police Act. A case in point is of *Republic v Wesley Cheruiyot Mutai*[2017] eKLR, where it was stated:-

“As stated earlier the accused was not just an ordinary member of public. He was a trained police officer who had been lawfully provided with a firearm for use in the course of his duties. Can a police officer resort to the use of his firearm willy nilly. Certainly not. Section 28 of the Police Act Cap 84 Laws of Kenya (of which I have no doubt accused was well aware), sets out the circumstances in which a police officer may resort to the use of his firearm.

Chapter 11 of the Kenya Police Manual 1990 at Section 3 provides as follows:-

“What is the effect of a police officer’s decision to use a firearm? The decision to use a firearm against any person places a serious legal as well as moral responsibility on a police officer. Therefore there should be no doubt in his mind of the circumstances in which he is justified in using a firearm.”

5. There are only certain justifiable instances in which a police officer may lawfully resort to the use of this firearm. These justifiable circumstances which are set out in Section 4 of Chapter 11 of the Kenya Police Manual include:- To protect himself or members of public To suppress or disperse a riotous mob To prevent the escape of a person in lawful custody on account of a felony

“To effect, a lawful arrest if the police officer is in danger because the person to be arrested is in possession of and is intending to use a dangerous weapon against him”

6. Section 49(5) and (6) of the *National Police Service Act* sets out the circumstances under which a police officer may resort to the use of force and firearms. Part A of the 6th schedule provides for the use of force (firearms) by the police as follows:-

“1. A police officer shall always attempt to use non violent means first and force may only be employed when non-violent means are ineffective or without any promise of achieving the intended result

2. The force used shall be proportional to the objective to be achieved, the seriousness of the offence and the resistance of the person against whom it is used, and only to the extent necessary while adhering to the provisions of the law and the standing orders”.

7. Well, what happened on the night in question is that Edward was hurt in a fracas, and he believed he was injured by the deceased. In his vengeful state of mind, he shot the deceased, not once but seven times. He shot the deceased when the deceased did not pose any danger to him or anyone else. It is in that back-ground that I shall consider the appropriate sentence for Edward.



Mitigations

8. Edward does not have prior convictions. He is married with children whom he states depend on him. I have also noted accused is first offender. He says he has lived peacefully with others while in custody.

Victim's Impact

9. I have considered the victim's impact report. The death had devastating effects on deceased's wife, child, parents and siblings. Deceased's wife developed generalised anxiety disorder while the deceased mother developed depression. There is no sentence of Edward that can compensate the loss the deceased's family suffered.

Analysis

10. The principle of sentencing is as follows:
- (a) to denounce unlawful conduct;
 - (b) to deter the offender and other persons from committing offences;
 - (c) to separate offenders from society, where necessary;
 - (d) to assist in rehabilitating offenders;
 - (e) to provide reparations for harm done to victims or to the community; and,
 - (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.
11. I have considered the Edward's mitigations and victim's impact report. The gravity of the crime cannot be overstated. Edward took the life of the deceased in a senseless and vicious way when the deceased did not pose any danger. The deceased had gone to the club, like any other reveller there, to have a good time and no excuse is enough for him being shot and killed. It is more poignant that the shooting was by a serving police officer whom it is expected would provide him with protection. I am of the view that the sentence this court shall pass should have the objective of denunciation and deterrence of that crime.
12. Having convicted Edward of murder and considering what is discussed above, the appropriate sentence is of 30 years imprisonment.

Disposition

13. Edward Moi Munjalu is hereby sentenced for the murder of William Kimani Mwangi deceased to serve 30 (Thirty) years imprisonment. In calculating that sentence, prison authority shall give Edward Moi Munjalu credit of 3 years and 10 months, being the period Edward Moi Munjalu has been in custody awaiting the conclusion of his trial.

RULING DATED and DELIVERED at KIAMBU this 2nd day of MAY, 2023.

MARY KASANGO

JUDGE

In the presence of:

Coram:

Court Assistant: Mourice/Julia



Accused Edward Moi Munjalu: Present

Mr. Munene Advocate for the accused:-present

Mr. Mbanya for the victim's family:- Mr. Kariuki HB for Mr. Mbanya

Mr. Gacharia for the State:-Present

Court

RULING delivered virtually.

MARY KASANGO

JUDGE

