



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Kalungu (Criminal Case 77 of 2014)
[2023] KEHC 19106 (KLR) (Crim) (21 June 2023) (Sentence)**

Neutral citation: [2023] KEHC 19106 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE 77 OF 2014**

K KIMONDO, J

JUNE 21, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

RAPHAEL MUOKI KALUNGU ACCUSED

SENTENCE

1. The accused was adjudged guilty of murder by the High Court (Wakiaga J). The learned judge is on transfer and has remitted the matter to me for sentencing.
2. On 20th June 2023, I conducted a brief sentencing session and heard submissions from all the three learned counsel for the Republic, the accused and the victim's family.
3. This is a grave felony that attracts the death penalty. However, following the momentous decision of the Supreme Court in *Francis Karioko Muruatetu & another v Republic*, Consolidated Petitions Nos. 15 & 16 of 2015 [2017] eKLR, the mandatory nature of the death sentence as provided for under Section 204 of the *Penal Code* was declared unconstitutional. This did not outlaw the death penalty, but it left the court with discretion to impose a lighter sentence.
4. I have considered the circumstances surrounding this offence. Sometime between the 6th and 7th July 2014, near Imara Daima Railway Station along Mombasa Road, Nairobi, the accused murdered his wife, Mary Waruguru Maina (hereafter the deceased) by strangulation. He then tried to conceal the dreadful act through a stage-managed road accident along the same road. It was a heinous and well premeditated homicide. The accused was arrested a few days later on 18th August 2014.
5. I have also taken into account the mitigation tendered by his counsel. The accused is a first offender. He continues to stand by his defence that on the totality of all the evidence, his culpability was not



established. Because of that posturing, he expressed no meaningful remorse for his actions. However, he said he regretted the death of his wife and that his children have missed the love and care of a father for the years he spent in custody. The accused prayed for leniency.

6. I have also paid heed to the pre-sentencing report dated 24th April 2023. It does not recommend a non-custodial sentence. Its key highlights are that the accused and deceased had a difficult marriage exacerbated by the accused's infidelity. The accused, a former police officer left service and was employed by the father of the deceased in his family business.
7. Learned counsel for the accused submitted that the accused has demonstrated good temperament; and, has reformed during his long incarceration. She stated that his addiction to alcohol is now behind him and has trained as a librarian and counsellor in prison. I was implored to grant the accused credit for the many years spent in remand custody; and, to fashion out a fair sentence.
8. The Victims Protection Act dictates that the views of the victim's family be considered at this stage. The family of the deceased states that it has been "affected in many ways; socially, psychologically and emotionally" from the loss of their loved one. The couples' three children were then young and "have had to come to terms with not having a mother in their lives". Learned counsel for the family beseeched the court to mete out the ultimate sentence of death.
9. Sentence should be commensurate to the moral blameworthiness of the offender but also guided by the nature and gravity of crime. Justice in this case calls for a lengthy custodial sentence. I sentence the accused to fifteen (15) years imprisonment. In accordance with section 333 (2) of the [Criminal Procedure Code](#), the period served by the accused in custody from the date of his arrest on 18th August 2014 to today's date shall be deducted from this sentence.
10. The accused has a right of appeal to the Court of Appeal within 14 days and as per the Rules of that Court. A copy of the proceedings, judgment and sentence shall be supplied to him immediately.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF JUNE 2023.

KANYI KIMONDO

JUDGE

Sentence read in court through Microsoft Teams in the presence of:

The accused person.

Ms. Kethi Kilonzo for the accused instructed by Kilonzo & Company Advocates.

Mr. Mwendwa for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. Njagi watching brief for the victim's family instructed by Mugendi Karigi & Company Advocates.

