



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Nduati (Criminal Case E014 of 2022)  
[2023] KEHC 18475 (KLR) (14 June 2023) (Sentence)**

Neutral citation: [2023] KEHC 18475 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL CASE E014 OF 2022**

**J WAKIAGA, J  
JUNE 14, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ALBERT GACHERU NDUATI ..... ACCUSED**

**SENTENCE**

1. The convict was charged with the offence of murder, the particulars of which were that on the 21<sup>st</sup> day of May 2022 at Gatara Village Kianjoni Location within Kahuro Sub County in Muranga County, he murdered Philomena Nyamura Irungu to which he pleaded guilty, having been cautioned by the Court of the consequences of a guilty plea.
2. The facts leading to the commission of the offence, were as per the pre-bail report was that the accused and the deceased had regular disagreements over an allegation of infidelity on the part of the deceased and that it was suspected that their last born child was born out of the said infidelity. On the material day the accused slashed the deceased with a *panga* in their one roomed timber house having threatened her during supper that she was going to die and leave them in peace.
3. When the deceased's children saw the accused assaulting their mother, they sought help only to return home to find her cut on the neck with the accused missing from the scene.
4. To enable the Court to decide on the most appropriate sentence and in compliance with the Sentencing Policy Guidelines, the Court called for pre -sentencing report and mitigation by the convict. In mitigation, Ms Gachengo Advocate stated that the convict was a first offender who before the aid incidence was in good stating in the community and a father of four children aged two – four years. It was stated that the children were currently staying with their grandmother. He was remorseful for having caused the death of his wife and that is why he had taken full responsibility for his action which was as a result of marital problems they were undergoing.



5. On behalf of the Prosecution, Ms Muriu stated that the deceased was the mother of three young children who had been robbed the love of their mother who had gone through trauma as a consequences of the convict's actions.
6. From the presentencing report it was stated that the convict dropped out of school in class five when his mother moved out of their grandparent's home and got married. He was married in the year 2008 and was a father of four children. It was stated that there was constant disagreement between him and the deceased over an allegation of infidelity. The convict had no previous conviction record. On his attitude towards the offence, it was stated that on the material day he got mentally disturbed and could not understand how the action occurred. He sought non-custodial sentence so as to take care of his children.
7. The family of the offender stated that he had been a law abiding member who was having a little dispute with his wife and had helped contract a new house, though they had noticed strange behaviour from him before the incidence which they did not attend to. The community supported his release as the Area Chief confirmed that he was a peaceful person and she had never been called upon to mediate or reconcile them on any marital disputes. It was contended that the community members were still hostile and opposed non-custodial sentence and were ready to revenge the death of the deceased. The chief organized how the children would be taken care of upon the arrest of the convict and placed them under the care of their maternal grandmother.
8. On the victim impact, it was stated that the deceased was the pillar of her family and with the father in custody, the care of the children, who would now grow up without a mother, was placed upon their grandmother. The incidence happened in the presence of the children leading to emotional and psychological trauma and financial burden upon their care giver and family disintegration. The family therefore wished that the accused be punished severely. It was concluded that the offender was not suitable for a non-custodial or community sentence.
9. The state filed sentencing submissions where it was seated that the convict used a sharp object to commit the offence in the presence of his children and that the sentencing guidelines were to facilitate the participation and involvement of the victims as provided for in Section 329C as well as Section 12 of the [Victim Protection Act](#) whose view were that the convict be given a deterrent sentence.
10. Ms Gachengo for the convict submitted that he was a first offender with good standing in the area and that the convict was remorseful and had fully admitted the facts by pleading guilty.

### **Determination**

11. The sentencing objectives are now well settled in Kenya having been captured in the Judiciary Sentencing Policy objectives as follows:
  - (a) Retribution – to punish the offender in a just manner for his criminal conduct
  - (b) Deterrence – to deter the offender from committing a similar offence
  - (c) Rehabilitation – to enable the offender to reform
  - (d) Restorative –to address the needs arising from the criminal conduct such as loss and damages
  - (e) Community protection – to protect the community by incapacitating the offender
  - (f) Denunciation – to communicate the community condemnation.



12. In this matter it is not disputed that the deceased died as a result of domestic violence meted upon her by the convict and this is an aggravating factor that the Court must take into account while passing an appropriate sentence. It is of note that the convict committed the offence in the presence of their children and in the confines of their home where the deceased expected to find safety.
13. The allegation of infidelity however morally wrongs the same may sound, was not a ground to loss her life over. The convict had an option of walking away and or letting the deceased to walk away if she had found a better frog to kiss.
14. In the circumstances of this case I have come to the conclusion that a custody sentence is best suited to serve the justice of this case and accordingly sentenced the convict to an imprisonment term of twenty years with effect from June 6, 2022 when he first appeared in Court in line with the provision of Section 333 of the *Criminal Procedure Code* and being a live to the fact that the same pleaded guilty to the offence thereby saving the Court and the prosecution the burden of a trial and it is ordered.
15. The convict having pleaded guilty is entitled to right of appeal on sentence.

**DATED, SIGNED AND DELIVERED AT MURANGA THIS 14<sup>TH</sup> DAY OF JUNE 2023**

**J. WAKIAGA**

**JUDGE**

In the presence of:

Mr. Waweru for DDP

Ms Bunei for Ms. Gachengo for Accused

Jackline – Court Assistant

