



**Republic v Kithinji & 2 others (Criminal Case 63 of 2015)  
[2023] KEHC 19734 (KLR) (6 July 2023) (Sentence)**

Neutral citation: [2023] KEHC 19734 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE 63 OF 2015  
EM MURIITHI, J  
JULY 6, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**BENJAMIN KITHINJI ..... 1<sup>ST</sup> ACCUSED**

**BERNARD MUTURA ..... 2<sup>ND</sup> ACCUSED**

**COSMAS KIRIMI ..... 3<sup>RD</sup> ACCUSED**

**SENTENCE**

1. This is a ruling on sentence of the two accused persons, Accused 1 and 2, who were convicted for the offence of murder contrary to section 203 as read with 204 of the [Penal Code](#) by the judgment of this court delivered on 23/ 2/ 2023.
2. Both accused had served a period of pre-trial detention awaiting their trial. Bernard Mutura was released on 13<sup>th</sup> November, 2012 upon deposit of Kshs 100,000/= cash bail. Benjamin Kithinji was released on January 18, 2018. Bernard had been detained to await his trial on September 7, 2015, and therefore was in custody for (2) years and (2) months before release on bail. Benjamin who was released on the same date September 7, 2015 was in custody for (2) years and (4) months.
3. In mitigation, Counsel for the Accused Mr. H. Kirimi mistakenly indicated that the 2 accused had been in custody since 2015 suggesting that they had been in pre-trial detention all the while and sought a non-custodial release. They were out on bond until February 23, 2023 when judgement was delivered and the case was fixed for sentencing proceedings administrating in the sentence today the July 6, 2023 a period of about 4 months which makes the total pre-trial detention for the accused to be respectively, (2) years and (6) months and (2) years (8) months for the 1<sup>st</sup> and 2<sup>nd</sup> accused.



4. In their own mitigation the accused urged that they were providers for their young families of respectively 3 and 4 children. Counsel for the accused said the accused were 40 years and 39 years old, first offenders and remorseful for their actions.
5. The DPP relied on the presentence Probation Officer's Report on the two accused persons and urged the court to consider to sentiments of the victims pursuant to *Victim Protection Act* and that Murder is a serious offence which should not be taken casually as happened in this region. Mr. Masila, Prosecution Counsel urged the court to impose a custodial sentence citing Judiciary Sentencing Policy Guidelines and the role of the court "to sensitize the community of the wrong which are done to innocent citizens and that no matter the circumstances there are other ways of resolving disputes other than Murder".
6. The court has considered the mitigation by the accused, the submissions of their counsel and counsel for the prosecution and the circumstances of the case where the deceased was killed on suspicion of having stolen miraa belonging to the 3<sup>rd</sup> accused, which the two accused 1 and 2 were hired to guard.
7. The court agrees with the DPP that a custodial sentence is necessary for purposes of deterrence. While in prison the accused shall be reformed through prison discipline system to facilitate their rehabilitation into the society upon release. The court considers that an imprisonment term for about twenty (20) years would meet the justice of the case. The sentence shall take into account the pre-trial detention of the accused in terms of section 333 (2) of the *Criminal Procedure Code*.

#### **Orders**

8. Accordingly, for the reasons set out here, having convicted the two accused 1 and 2 for the offence of murder under section 203, as read with 204 of the *Penal Code*, the Court passes for each accused 1 and 2, Bernard Mutura and Benjamin Kithinji, a sentence of imprisonment for a period of fifteen (15) years from today, taking into account that the accused have been in pre-trial detention of close to three years.
9. The cash bail deposited for the accused's attendance for their trial shall be released to the depositors.

Orders accordingly.

**DATED AND DELIVERED THIS 6<sup>TH</sup> DAY OF JULY, 2023.**

**EDWARD M. MURIITHI**

**JUDGE**

#### **Appearances:**

Mr. Masila for DPP.

Mr. E. Kimathi with Mr. H. Kirimi for the Accused.

