



**Republic v Nakola (Criminal Case 15 of 2017)  
[2024] KEHC 12875 (KLR) (25 October 2024) (Sentence)**

Neutral citation: [2024] KEHC 12875 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL CASE 15 OF 2017  
K KIMONDO, J  
OCTOBER 25, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**EZEKIEL SAITABU NAKOLA ..... ACCUSED**

**SENTENCE**

1. The accused has been convicted of murder, a most heinous crime that attracts the death penalty. But following the momentous decision by the Supreme Court in *Francis Karioko Muruatetu & others v Republic* Petition 15 of 2015 [2017] eKLR, the mandatory nature of the death penalty was declared unconstitutional.
2. It however bears repeating that the Supreme Court did not outlaw the death penalty.
3. In the instant case, I have taken into consideration the mitigation originally made by counsel on 30.7.2024 and the further mitigation made on his behalf this morning. The accused is a first offender. Though his counsel stated he was remorseful, the pre-sentence report highlights that he still protests his innocence. I cannot blame him for that stand as he still has a right of appeal. The report shows that prior to this incident he had “exhibited pro-social values and attitudes, does not take alcohol or drugs and is a first offender.” He also seems to have reasonable family ties.
4. I have also taken into consideration that he is 44 years and has been in custody since his arrest.
5. But every offence affects innocent victims. In this case, the accused murdered an elderly lady and tried desperately to cover up the macabre act by burying her remains behind a cow-shed next to a decaying carcass of a cow. As pointed out in the judgment, he also misled, for quite some time, the children of the deceased that their mother was well or had travelled.



6. All this time, he was pilfering from her mobile-wallet and spiriting away household goods to his girlfriend's house in Karega.
7. The family of the victim is at great pains. Their views are well captured by the sentiments of sons Mathew Waweru, Bishop Muiro, his wife and another son Felix Ndungu Mwangi. The psychological effects and turmoil is exacerbated by the fact that there was silence about the accused's motive to kill his employer in such a cruel and sadistic manner.
8. Sentencing must be commensurate to the moral blameworthiness of the offender. One of the prime objectives of the criminal law is to impose appropriate, just and proportional measures taking into account the gravity of the crime and the manner it was executed.
9. The justice of this case does not countenance a non-custodial sentence. I thus do hereby sentence the accused to serve 20 (twenty) years in jail.
10. In accordance with section 333 of the Criminal Procedure Code, the period spent in custody shall be deducted. For the avoidance of doubt that period runs from 22/3/2017 (the date of his arrest) to the date of his conviction today (25.10.2024).
11. The accused has a right of appeal to the Court of Appeal within 14 days and in accordance with the rules of that court. A copy of this sentence, judgment and proceedings shall be provided to him.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF OCTOBER 2024.**

**KANYI KIMONDO**

**JUDGE**

Sentence read virtually on Microsoft Teams in the presence of-  
Accused.

Ms Muriu for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. Mbuthia for the accused instructed by J. N. Mbuthia & Co. Advocates

Mr. E. Ombuna, Court Assistant.

