



REPUBLIC OF KENYA



KENYA LAW
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Republic v Kairu (Criminal Case 6 of 2022)
[2024] KEHC 12967 (KLR) (24 October 2024) (Sentence)

Neutral citation: [2024] KEHC 12967 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 6 OF 2022
JM NANG'EA, J
OCTOBER 24, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

JOSEPH KARIUKI KAIRU ACCUSED

SENTENCE

1. The accused was on 25th July 2024 convicted of the capital offence of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*. The defence counsel (Ms Mugweru) thereafter made pre-sentence submissions pointing out that the accused is a minor who has been in custody for two(2) years or thereabouts. He is said to be a first offender and remorseful for the serious offence. The court was further told that while in custody, the subject is undertaking Bible studies. For the stated reasons, the court was urged to order a non-custodial sentence to enable the subject complete his curtailed schooling and be useful to the society.
2. Upon hearing and recording the mitigation submissions, my brother (H. M. Nyaga, J) who heard the case and convicted the subject ordered for a Probation/Community Service Officer's Report before sentencing. That report dated 26th September 2024 has been filed. The report indicates that the accused is now 18 years old. He is said to have dropped off school at class 8.
3. According to the Probation Officer, the accused is not remorseful as he maintained his innocence while being interviewed for the report, also blaming the victim and others for intending to harm him. For this reason, it is difficult to rehabilitate him if placed on a non-custodial programme adds the Probation Officer.
4. The Probation Officer's Report further indicates that the victim's mother depended on him while the accused's uncle doubts that he is a first offender.



5. For the above reasons inter alia, the Probation Officer, does not expressly recommend a non-custodial sentence leaving the matter to the court.
6. The prosecuting counsel did not reply to the accused's submissions and/or Probation Officer's Report.
7. The record shows that the accused was a minor aged 16 years or thereabouts at the time the offence was committed. He is now around 18 years old. Section 190(1) and (2) of the *Children Act* No. 8 of 2001 provides that no child shall be sentenced to imprisonment or be placed in a detention camp or sentenced to death. Section 191 of the *Act* sets out non-custodial sentences or orders that may be made in respect of a child offender. The orders, a discharge, probation community service and placement in borstal institutions.
8. This is a case of the offender being a minor at the time of commission of the offence and transiting to the age of majority at the time of sentencing upon conviction. The Court of Appeal in the case of *JKK vs Republic* (2013) eKLR. observed that;

“When dealing with an offender who has attained the age of 18, the court can sentence him in any other lawful manner except a death sentence or life imprisonment.”
9. Depending on the circumstances in which the offence was committed, the superior court held that an offender who transitions to adulthood during sentencing may be ordered to serve a custodial sentence so that he can be brought to bear the weight and responsibility of his omission and lack of judgment. There are many other superior courts' decisions that have been guided by this decision of the Court of Appeal.
10. The offender herein brutally murdered the victim as noted in the judgment. After killing the deceased, he put the body in a canvas and left it on the road as he took off with the deceased's motorcycle and phone. The deceased was bludgeoned several times leading to fatal injuries.
11. I am persuaded in the circumstances that a custodial sentence is necessary. The Probation Officer's opinion in this regard is accepted.
12. Taking all the relevant factors into account while considering that the convict was a minor at the time he committed the offence, I hereby sentence him to fifteen (15) years imprisonment.
13. It is noted that the offender was not released on bond/bail and the date of his arrest is not shown on the record. He will serve the sentence from the date of his arraignment in court on 7th February 2022. He has a right to appeal both conviction and sentence.
14. It is accordingly ordered.

J. M. NANG'EA, JUDGE.

RULING DELIVERED THIS 24TH DAY OF OCTOBER 2024 IN THE PRESENCE OF:

The state, Mr. Ruto

Ms Mugweru advocate for the accused

Accused present

