



Director of Public Prosecution v Patrick & another (Criminal Case 8 of 2016) [2024] KEHC 13410 (KLR) (5 November 2024) (Sentence)

Neutral citation: [2024] KEHC 13410 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 8 OF 2016
S MBUNGI, J
NOVEMBER 5, 2024**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION REPUBLIC

AND

EVANS OLUOCH PATRICK 1ST ACCUSED

JOSEPH ODUOR NYANGULA ALIAS ABABU 2ND ACCUSED

SENTENCE

1. The accused persons were charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence was that on the 11th day of September, 2015 at Nyalenda Village, Mukhuwa sub-location at Bukaya location in Mumias sub-county within Kakamega County, the accused persons unlawfully murdered Hemelea Kusimba Akoth.
2. The matter proceeded to full trial and the prosecution called and relied on the evidence of four witnesses to prove their case.
3. The court ruled that a prima facie case had been established against the accused persons and they were put on their defence.
4. The defence called two witnesses and a judgement was entered thereafter where this court presided by Hon. Justice P.J.O Otieno found the accused persons guilty of the offence of murder as charged and convicted them accordingly.
5. I heard the mitigation where the counsel for the accused persons, Mr. Arwanda, pleaded with the court for leniency in sentencing, stating that the 1st accused is a first time offender of good character and has never failed to attend court. He submitted that the 1st accused person respects the law of the land. Further, the accused person has a wife and children and is the sole bread winner of the family. He is remorseful and regrets his actions.



6. The counsel submitted that the 2nd accused is remorseful and a first time offender, has no criminal record and has been in remand since 2016. He further stated that during this period, the 2nd accused person has changed himself. He sought that the court considers his senior age and the time he has spent in custody during trial.
7. The state counsel submitted that a life was lost, submitting that the deceased's family lost a sister, wife and mother who was killed in a very cruel way by the accused persons. He submitted that the accused persons hit the deceased using a panga on the head and broke her ribs. He also submitted that the murder was committed in the presence of PW3, a minor and has caused a permanent scar which can never be healed. He beseeched the court to sentence the accused persons to life imprisonment.
8. The pre-sentence report filed for both accused persons by the Probation Department indicates that the community is hostile and still terrified by the manner the incident was orchestrated. The community also stated that crime rate has been low since the accused persons herein left the area.
9. I note that the offenders are remorseful but the murder still has an emotional toll on the victim's family.
10. The Supreme Court in *Francis Karioko Muruatetu & Another vs Republic*, Petition No. 15 of 2015, as a guide in sentencing held that:

“...the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

- a. age of the offender
 - b. being a first offender;
 - c. whether the offender pleaded guilty;
 - d. character and record of the offender;
 - e. commission of the offence in response to gender-based violence;
 - f. remorsefulness of the offender;
 - g. the possibility of reform and social re-adaptation of the offender;
 - h. any other factor that the Court considers relevant.”
11. In *Dahir Hussein v. Republic* Criminal Appeal No. 1 of 2015; [2015] eKLR, the High Court held that the objectives of sentencing include: “deterrence, rehabilitation, accountability for one's actions, society protection, retribution and denouncing the conduct by the offender on the harm done to the victim.”
 12. The 2016 *Judiciary of Kenya Sentencing Policy Guidelines* lists the objectives of sentencing at page 15, paragraph 4.1 as follows:

“Sentences are imposed to meet the following objectives:

1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.



3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
 4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
 5. Community protection: To protect the community by incapacitating the offender.
 6. Denunciation: To communicate the community's condemnation of the criminal conduct."
13. Under section 203 of the *Penal Code*, murder is punishable by a maximum of death sentence. The state and defence counsel have stated that the accused is a first-time offender. As a result, I've ruled out the death sentence.
 14. The discretion in sentencing rests with the trial judge because he or she has the knowledge of the relevant facts before him or her and in many instances, has observed the accused and witnesses' demeanor. The discretion must however be exercised judiciously. In the Nigerian case of *African Continents Bank vs Nuamani* [1991] NWLI (part86)486, it was observed that,

“The exercise of court’s discretion is said to be judicial if the judge invokes the power in his capacity as a judge qua law. An exercise of discretionary power will be said to be judicial, if the power is exercised in accordance with the enabling statutes, discretionary power is said to be judicious if it arises or conveys the intellectual wisdom or prudent intellectual capacity of the judge. The exercise must be based on a sound and sensible judgment with a view to doing justice to the parties.”
 15. I was not the trial court, but I have perused the proceedings. I am properly sized of the facts in the matter.
 16. have considered the submissions by the prosecution Counsel, the mitigation by the defence counsel on behalf of the accused persons and the pre-sentence reports filed in this court. I have also considered the circumstances under which the murder was committed and how it was committed. The deceased was a victim of a revenge mission orchestrated by the accused persons against the husband who was against cattle theft in the area. The murder was committed in front of the deceased daughter, a minor, an awful experience which she shall live with for her entire life. The deceased was a thirty-eight year old lady who was attacked by five armed men who mercilessly battered her causing grievous injuries on her body.
 17. From the court record, this was a second attack on her family. It appears the attackers were out to eliminate/ wipe out the entire family.
 18. Taking all these facts into consideration, I sentence each the accused namely Evans Oluoch Patrick and Joseph Oduor Nyangula alias Ababu to a custodial sentence of forty (40) years.

Final Orders:

1. Accused to serve 40 years' imprisonment.



2. Period served in remand by the accused persons to be taken into account when computing the period to be served as per the provision of Section 333(2) of the *Criminal Procedure Code*.
3. Right of appeal 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 5TH DAY OF NOVEMBER, 2024.

S.N MBUNGI

JUDGE

In the presence of :

Accused persons – present in person

Ms. Arwanda Advocate for the accused – present online

Court Prosecutor – Mbonzo present online

Court Assistant – Elizabeth Ang'onga

