



**Republic v Njuki (Criminal Case E040 of 2021)
[2024] KEHC 14598 (KLR) (19 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14598 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE E040 OF 2021
RM MWONGO, J
NOVEMBER 19, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

PAUL MURAGE NJUKI ACCUSED

JUDGMENT

1. The Accused is charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the 28th November, 2021 at Kathata village, Rukenya Sub-County within Kirinyaga County he unlawfully murdered:
 1. Millicent Muthoni Ileri then aged 38 years (wife)
 2. Nelly Wawira Muthoni then aged 13 years (daughter)
 3. Gifton Bundi Muthoni then aged 7 years (son)
 4. Shelomith Wambui Muthoni then aged 5 years (daughter)
 5. Clifton Njuki Murage then aged 1 year (son)
2. On 24th January, 2021 he pleaded not guilty to a charge of murder. However, on 2nd October, 2023 the accused stated that he would take plea afresh. He was given time to consider his position and, on 9th November, 2023 he pleaded guilty to murder.
3. The matter proceeded for mitigation on 8th April, 2024.

Summary of Facts

4. There having been a hearing, the prosecution summarized the facts as follows: On 28th November, 2021 Millicent Muthoni Ileri the accused's wife, went back to the accused's homestead where they



retired to bed after sharing a meal prepared by the accused. At about 22:30 hrs, whilst they slept, the deceased wanted to know why the accused always harassed her when she drunk and returned home late. She removed a bottle of Cane Spirit drink and after sipping it, gave some to the accused.

5. Later, an argument ensued over a kitchen knife the deceased had stashed in her bag which seemed to agitate the accused. Enraged, he pushed her and picked an axe which he used to hit her on the head. He went to the children's bedroom still in fury and hit his elder daughter, Nelly, and son, Gifton. He then turned to Shelomith and Clifton striking them on the head with the same axe killing them instantly.
6. After killing the entire family, he tried to commit suicide by hanging himself using a leso which was torn into two pieces. He then, consumed some insecticide which rendered him unconscious until 6 am. Then he tried to kill himself with an axe at River Murubara but the axe fell in the river. Later, he decided to surrender to Kianyaga Police Station and narrated the whole ordeal to the police. The police found all he bodies of the deceased persons lying on their beds.
7. The Post-Mortem Reports of the deceased each indicates the cause of death to be severe head injury following assault with a sharp and blunt object.

Mitigation

8. The accused's counsel mitigated as follows: the accused is remorseful for the offence as the victims are his family. He surrendered to the police after his suicide attempt failed. He had a troubled marriage with his deceased wife. On the fateful night, the wife had just returned, and he was intoxicated. He was without state while committing the offence. He has a history of taking drugs. He has maintained a good record in custody and has acquired life skills.
9. The prosecution submitted that the accused was referred in the Probation Report as "Axe Man." He was mentally fit while killing the victims. The prosecution seeks a death sentence or a term sentence of 34 years. The Probation Officer's Pre-Sentence Report dated 15th February, 2024 is unfavorable. The community has nick named the accused "Axe Man" to express the fear they have for him.

Issues for Determination

10. The only issue for determination is what is the appropriate sentence for the accused.

Analysis and Determination

11. The accused was convicted on his own plea of guilty for murder. Section 203 and 204 of the Penal Code under which the accused is charged provide for the offence of murder and the punishment for it, in the following terms:
 - “203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
 204. Any person who is convicted of murder shall be sentenced to death.”
12. The circumstances of the offence are that the accused person fatally assaulted the five members of his family with an axe leading to severe head injury. There is no evidence of provocation or insanity.
13. Under the Judiciary sentencing Policy guidelines, the objectives of sentencing are:
 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.
14. In the case of Francis Karioko Muruatetu & Another v Republic (2017) eKLR the Supreme Court outlawed the mandatory nature of the death sentence itself. Thus, the death sentence is no longer mandatory and Murder convicts are now entitled to have their mitigation taken into account in determining the sentence.

Mitigation

15. In the Muruatetu case (Supra), the Supreme Court made several observations that are very helpful to the Lower Courts when it comes to sentencing. At paragraph 48 the Supreme Court state as follows:
- “(48)] Section 204 of the Penal Code deprives the Court of the use of judicial discretion in a matter of life and death. Such law can only be regarded as harsh, unjust and unfair. The mandatory nature deprives the Courts of their legitimate jurisdiction to exercise discretion not to impose the death sentence in appropriate cases. Where a court listens to mitigating circumstances but has, nonetheless, to impose a set sentence, the sentence imposed fails to conform to the tenets of fair trial that accrue to accused persons under Articles 25 of the Constitution; an absolute right.”
16. The accused in his mitigation stated that he is remorseful and regrets his action. While in custody he has attained life skills and he has improved his mental wellness.
17. The Probation Officer's Pre-Sentence Report dated 15th February, 2024 is unfavourable. It states that the victim and the community request for a severe sentence for them to perceive that justice has been served.
18. Under the provisions of Section 333(2) of the CPC the period spent in custody should be considered in sentencing the accused. The accused was arraigned in court on 15th December, 2021 and has remained in custody to date. In this regard in the case of Republic v Isaac Wanjala Murumba [2021] eKLR, it was held:
- “In accordance with section 333(2) of the Criminal Procedure Code, the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account.”
19. Having considered the aggravated nature of the offence and the effect of the same on the family and the community. I am of the view that the accused deserves a custodial sentence.



20. In *Mwei v Republic (Criminal Petition 104 of 2020)* [2022] KEHC 13045 (KLR) (21 September 2022) (Judgment)

“From the evidence on record, the Petitioner on 29/8/2007 arrived home in a state of intoxication and got into a physical altercation with the wife and in the midst of the fight the Petitioner killed their three-year-old son without any legal justification.

In the end, the death sentence is hereby set aside and the same is substituted with 28 years’ imprisonment. The said sentence shall run from the date of arrest.”

Disposition

21. In the present case, the accused’s actions are far more atrocious than in the Mwei Case. The prosecution proposed 34 years imprisonment sentence whilst the defence proposed a non-custodial sentence.
22. Given that remission is a right under the *Prisons Act*, the accused will benefit from one-third of his sentence being, I hereby sentence the accused to forty (40) years imprisonment.
23. Orders accordingly.

DELIVERED AT KERUGOYA THIS 19TH DAY OF NOVEMBER, 2024

R. MWONGO

JUDGE

Delivered in the presence of:

Accused: Present in Court

Mugo: holding brief for Nyangati for Accused

Mamba for the State

Court Assistant, Murage

