



**Republic v Kanai (Criminal Case 16 of 2017)
[2024] KEHC 14037 (KLR) (Crim) (13 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14037 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 16 OF 2017
LN MUTENDE, J
NOVEMBER 13, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

DAMARIS KANYIVA KANAI ACCUSED

RULING

1. Damaris Kanyiva Kanai, the accused, was pronounced guilty, convicted of the murder of John Kikati following the incident which occurred on the night of 30th of March, 2017. No previous records were availed hence Ms. Dela, learned Prosecution Counsel asked the court to treat her as a first offender.
2. In mitigation through learned defence counsel, Ms. Alusiola, the accused stated that she was a first offender and that she has been in remand custody for the past 8 years. That she has been fully rehabilitated during this period. It was further urged that she is a mother of three (3) girls, and, is remorseful. For those reasons she prays for a non-custodial sentence.
3. To obtain views of the victims as provided in law, social inquiry was conducted and a pre-sentence report filed. It was established that the accused was in a marriage that failed hence she was left with three children to maintain who are now aged, 23, 20 and 17 years, respectively.
4. On the circumstances of the offence, admitting that the deceased was her boyfriend, she stated that he became insecure and on the fateful date, he started assaulting her and in the process of protecting herself, she accidentally stabbed him in the abdomen. That she is ready to apologize to the victim family. She pleads for a non-custodial sentence.
5. The victim was 27 years at the time of his demise. He worked at a construction site and rented a house in Huruma where he cohabited with the accused. Secondary victims, his father and mother



- were traumatized by the tragedy, with the mother going into depression. That they were receptive to reconciliation and compensation per the Kamba customary law but the family of the accused is not open to the idea.
6. The accused family admit the attempts to resolve the matter but they argue that it would not succeed since the case was in court.
 7. The accused is said to be trustworthy and dependable. The family was shocked that she committed the offence They vouch for her release on a non-custodial sentence. The accused sister is willing to live with her and the family will also support her rehabilitation. She was self-employed and also hardworking and that a non-custodial sentence will help her take care of the young children.
 8. The Community represented by the local administrator did not know the accused but her family did not have a known history of criminality. It was indicated that her release would not pose any danger to the community.
 9. It is urged by the defence counsel that the period served is sufficient for rehabilitation and that the court may release her. From the facts and particulars of the presentence report, the accused is 37 years old and she was in a relationship with the deceased who was 27 years old at the time of his demise. The two had domestic wrangles.
 10. The accused contravened Section 204 of the Penal Code which provides for a death penalty. In Francis Karioko Muruatetu & Another v Republic [2017] eKLR the Supreme Court held that mandatory death penalty for murder was unconstitutional. The death penalty is still available but it should be meted out in deserving cases and as a last resort.
 11. The court has considered the facts of the case and the mitigation factors put forth. The sentencing process requires the court to balance the aggravating and mitigating factors and also consider the objectives of sentencing which include ensuring that the offender is adequately punished, preventing future crime, reforming the offender and making the offender accountable so as to promote a sense of responsibility.
 12. The deceased succumbed to fatal injuries sustained, the evidence adduced and the postmortem report proved the brutal and intended death. Although the accused came up with some unbelievable theory of how the deceased met his death by stabbing himself, following the social inquiry carried out she now regrets the offence and expresses remorse which depicts her as an unbelievable individual.
 13. The murder weapon was a knife which was turned into a lethal weapon. This demonstrated how heinous the crime committed was. And, after the act, the accused closed the door behind her leaving the deceased to succumb to injuries sustained.
 14. The deceased was 27 years old as I have afore stated, he was youthful and had a life ahead of him. He worked to earn a living and was cohabiting with the accused. The deceased had an inherent right to life and to self-realization which was arbitrarily taken away from him.
 15. The accused children are aged 23, 20 and 17 years old. These are not children of tender years. The youngest daughter in this case may not be in dire need of her maternal care as she has been away for 8 years. The law is that each case is determined according to its merit and in this case whereas the court appreciates that she has children, that is not a strong mitigating factor.
 16. The reports indicate that she attended various biblical courses in remand custody. However, the sentence must also take into account the gravity of the offence, the accused actions and impact on the victim. The evidence of rehabilitation is scanty. It is also not conclusive to enable the court determine whether she has been fully rehabilitated at this stage.



17. Rehabilitating an offender may be complex as it would call on focusing on not only social but psychological attitudinal aspects. There will be need to identify what may have contributed to violent behavior and what intervention is needed to address it. Other than the Biblical courses undertaken, there is need to acquire skills to avert recidivism.
18. The presentence report has not indicated how rehabilitation will be achieved. The family of the accused, must be involved in rehabilitation process and the community should assist her get connected to people around her so as to survive outside prison. The accused sister would not have the capacity to facilitate her rehabilitation since it was not demonstrated.
19. Looking at comparable decisions where the accused used dangerous weapons and caused grievous and fatal injuries; In Republic v Peter Njoroge Muthua [2021] eKLR, the accused person killed an innocent person because of mere suspicion that he was having an affair with his girlfriend. He also stabbed his girlfriend and drank poison in attempt to commit suicide, the offence was reduced to manslaughter and the accused was sentenced to (10) years imprisonment.
20. In Republic v Ruth Wanjiku Kamande [2018] eKLR, Lessit J (As she then was) sentenced the accused to death. The court was of the view that that the accused deliberately stabbed the victim going by the manner in which she executed the injuries by the number of stabs and the choice of the area stabbed. The stabs were 25 in number. She was sentenced to suffer death.
21. In Republic v Collins Ongeru Orina [2021] eKLR Mshila J elaborated the prevalence of crimes connected to the case before this court. The court took the authoritative view that there was no room for leniency. The accused was sentenced to 12 years for killing his girlfriend. The court held that:

“This court has judicial notice that these kind of offences where girlfriend or boyfriend refuse to walk away from a failed love affair and resort to eliminating the other have become prevalent and meting out a lenient sentence would be setting a dangerous trend; young men and women must learn to accept that love wanes and despite feeling hurt, angry, rejected and heart-broken must learn how to walk away instead of retaliating; in the circumstance a custodial sentence would be an appropriate sentence; In the circumstances this court is satisfied that a term of twelve (12) years imprisonment is found to be justified;”
22. Guided by the authorities cited, and taking into consideration all factors and circumstances in which the offence was committed and the fact that the accused did not save judicial time, I sentence the accused to serve twenty (20) years imprisonment to be effective from the date of arraignment, the 24th day of April, 2017.
23. It is so ordered.
24. Right of Appeal is explained.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 13TH DAY OF NOVEMBER, 2024.

L. N. MUTENDE

JUDGE

