



**Director of Public Prosecution v Muchika (Criminal Case 59 of 2013)  
[2024] KEHC 15307 (KLR) (3 December 2024) (Sentence)**

Neutral citation: [2024] KEHC 15307 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE 59 OF 2013  
S MBUNGI, J  
DECEMBER 3, 2024**

**BETWEEN**

**DIRECTOR OF PUBLIC PROSECUTION ..... REPUBLIC**

**AND**

**MARK MUCHIKA ..... ACCUSED**

**SENTENCE**

1. The accused person was charged with the offence of murder contrary to section 203 as read with section 204 of the *penal code*. The particulars of the offence were that on the 25<sup>th</sup> day of August, 2012 at Lwasi Village, Mwera sub-location Kakamega North district within Kakamega Central, the accused person assaulted Solomon Mukunji to death by hitting him with a stone on the head.
2. The matter proceeded to full trial and the prosecution called and relied on the evidence of nine witnesses to prove their case.
3. The court ruled that a prima facie case had been established against the accused person and was put on his defence.
4. The defence called five witnesses and judgment was entered thereafter where this court presided by Hon. Justice P.J.O Otieno found the accused person guilty of the offence of murder as charged and convicted him accordingly.
5. I heard the mitigation where the counsel for the accused person, Ms. Chesire, pleaded with the court to exercise leniency while sentencing the accused, stating that the accused is 56 years of age and the sole breadwinner for his eight children. She also stated that the accused's family is ready to accept him back to the community and sought for a non-custodial sentence.
6. The state counsel submitted that a life was lost, submitting that the deceased's family lost a breadwinner and beseeched the court for a custodial sentence.



7. The pre-sentence report filed by the Probation Department indicates that the accused person worked as a businessman at a jiggery which he owned with two of his eldest sons. He had a normal childhood and the family has no history of crime. The accused person has no history of drugs and alcohol and is suffering from diabetes, ulcers and hypertension.
8. I note that the offender is remorseful but the murder still has an emotional toll on the victim's family who was the primary breadwinner for his six children.
9. The Supreme Court in *Francis Karioko Muruatetu & Another v 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.”
10. 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.”
  11. 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.”
12. 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 with no past criminal record. As a result, I've ruled out the death sentence.
  13. 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 Continental Bank v Nuamani* [1991] NWLI (part 86) 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.”
  14. I was not the trial judge, but I have perused the proceedings. I am properly sized of the facts in the matter.
  15. I have considered the submissions by the prosecution Counsel, the mitigation by the defence counsel on behalf of the accused person and the pre-sentence report filed in this court. I have also considered the circumstances under which the murder was committed and how it was committed. The deceased was innocently caught in the crossfire of a land dispute between the accused and PW1 Nathan Angatia. The accused and his son attacked PW1 and held him while hitting him with a tarimbo. It was then that the deceased appeared and tried to intervene. The accused person then threw a stone at the deceased, hitting him on the face. He fell and lost consciousness, He was rushed to hospital and was referred to Eldoret Referral Hospital and he died on the way near Maili Tisa.
  16. The weapon used and the part of the body hit, the deceased's head on the face. It shows that the convict was out to inflict grievous harm on the deceased. I therefore decline to met a non-custodial sentence.
  17. Taking all these facts into consideration and in particular the age of the accused; He is 56 years old. According to projections by the United Nations on life expectancy in Kenya from 1950 to 2024, The life expectancy in Kenya in 2024 is estimated to be 70.4 years for the total population, 68.6 years for males, and 72.2 years for females. However, life expectancy in Kenya is still lower than the global average of 72.8 years.
  18. Biblically God allows a human being to live up to 80 years. In Psalms 90:10 New Living Translation (NLT) states that seventy years are given to us! Some even live to eighty. But even the best years are filled with pain and trouble; soon they disappear, and we fly away.
  19. From the record, the convict was brought to court on 04.11.2013. He was released from custody on 17.12.2013. He was in custody for 13 days. Judgment was read on 04.10.2024 and he was again placed in custody until the date of sentencing 03.12.2024 a period of 60 days (2 months). In line with the provisions of section 333(2) of the [Criminal Procedure Code](#) 73 days shall be subtracted from the



sentence of twenty (20) years which I hereby sentence him to serve. For avoidance of doubt, the convict shall serve a custodial sentence of 19 years and 292 days only.

20. Right of appeal 14 days explained.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 3<sup>RD</sup> DAY OF DECEMBER, 2024.**

**S.N MBUNGI**

**JUDGE**

In the presence of :

Accused person – present

Ms. Chesire Advocate for the accused present

Court Prosecutor – Mbonzo

Court Assistant – Elizabeth Angong'a

