



**Mukweyu v Republic (Miscellaneous Criminal Application
E052 of 2023) [2024] KEHC 15920 (KLR) (16 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15920 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CRIMINAL APPLICATION E052 OF 2023**

AC BETT, J

DECEMBER 16, 2024

BETWEEN

PETER MUKWEYU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant, Peter Mukweyu was convicted on his own plea of guilty of the offence of Manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#).
2. The particulars were that on 20th September 2020 at Chevaywa Village, Tande Sub-location in Kakamega North Sub-County within Kakamega County, he unlawfully killed Roselida Ngao.
3. The facts of the case were that on the material date, the Applicant who was drunk, arrived home and started chasing away other children whereupon he was seen entering the deceased’s house and locking the door. Later, the deceased was found dead in her house having been beaten by the Applicant. The police, who had been called to scene arrested the Applicant and moved the body of the victim to the mortuary. An autopsy would reveal that the deceased died from external blood loss secondary to sharp force trauma following assault. The post mortem report and the murder weapon were produced.
4. In mitigation, the Applicant said he was sorry and pleaded forgiveness. The learned trial Magistrate sentenced him to fifteen (15) years imprisonment.
5. By a Notice of Motion dated 3rd November 2023, the Applicant petitioned the court to reduce the sentence of fifteen (15) years on the grounds laid out in his application and the supporting affidavit, the main grounds being as follows:-
 - (i) That no enmity existed between his family and that of the deceased, who was a close family and childhood friend.



- (ii) That the Applicant did not intend to kill the deceased and only stabbed him once.
 - (iii) That the Applicant is the sole breadwinner of his family who were suffering as a result of his incarceration.
 - (iv) That the Applicant had been rehabilitated and reformed after undertaking theological courses.
 - (v) That the time he spent in custody during trial be considered in computing the sentence.
6. Despite being granted time to file their written submissions, both parties failed to file any submissions.
 7. The County Probation Director filed a sentence review report on 6th October 2024. The report states that the Applicant has served four (4) years out of fifteen (15) year sentence imposed upon him by the trial court. According to the report, the Applicant is aged 32 years, married with two children, who were currently under the care of his wife. The Applicant was a casual labourer at the time of committing the offence, having lost his job as a driver during the Covid-19 pandemic.
 8. The sentence review reports that after the murder incident, the Accused's land was sold by the clan and his family resettled at Lupida in Busia County in compliance with the customary tradition of relocating the killer of a family member.
 9. The report further states that the Applicant is remorseful and prays for leniency noting that he has learnt a lesson while in prison. As an auxiliary, the Applicant is said to have changed and while in prison, he has trained in Theology and has been often sensitized by an organization known as "Crime Si Poa". The Applicant is considered to be of good behavior by the prison officials, has been assigned work as a kitchen cleaner and has had no disciplinary cases.
 10. The Probation office conducted an interview with the Applicant's family, which points to a family that is divided in their views regarding the Applicant. Some are sympathetic while others are bitter. However, they blame alcohol and bhang for the Applicant's deviant behaviour.
 11. The community is amenable towards the Applicant being granted a sentence review in view of the relocation of the Applicant to Busia.
 12. The Applicant killed his grandmother, a defenceless old woman. The post mortem report reveals cruel use of a sharp object to cut across the deceased's neck. The Applicant attributed the offence to his abuse of alcohol and drugs, a fact that is confirmed by the family and community.
 13. The power to review a sentence, and to re-sentence is derived from Article 165 (6) of the [Constitution](#) which states as follows:-

"The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court."
 14. In exercising the constitutional powers of revision in criminal proceedings, the court is guided by Section 362 and 364 of the [Criminal Procedure Code](#) which stipulate:-

"362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court."



- (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may —
- (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
 - (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
 - (c) ...
- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:
- Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.
- (3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
- (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
- (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”

15. In *Titus Muasya Katiku v Republic* [2023] KEHC 2014 (KLR), Olel J. stated as follows:-

“7. Re-sentencing is neither a hearing de novo nor an appeal. It is a proceeding undertaken within the court’s power to review sentence. The court will ordinarily check the legality or propriety or appropriateness of the sentence. The relevant considerations in the proceeding *inter alia*, are the penalty law, mitigating or aggravating factors, and the objects of punishments. In re-sentencing proceedings, conviction is not in issue.”

16. The maximum penalty for the offence of manslaughter as prescribed by Section 205 of the *Penal Code* is life imprisonment. There is no minimum sentence provided. In the circumstances, a court has the unfettered discretion to determine an appropriate sentence to impose on an accused person provided



the sentence is within the confines of the law. The discretion must be exercised judiciously, upon the court taking into account all the surrounding circumstances of the offence.

17. It is trite law that an appellate court should not interfere with the exercise of a trial court's discretion on sentencing. This was held in the case of *Bernard Kimani Gacheru v Republic*, Cr. App. No. 188 of 2000 (Nakuru), cited by the Court of Appeal in *I.P. Veronica Gitahi & Another v Republic* [2017] eKLR where the court stated:-

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist.”

18. In determining whether or not to review a sentence the court has to consider inter alia, whether the sentencing court was guided by the general principles of sentencing. The first principle is the principle of proportionality. The sentence must match the offence committed. It should neither be too lenient or too harsh. Another principle is equality and or uniformity. The principle of equality obligated the court to ensure that those who have committed the same offences serve similar sentences. See the case of *Republic v Jackson Maina Wangui & Another* [2017] eKLR.
19. In meting out a sentence, the court must also ensure that the reasoning informing the sentence imposed is evident in its judgement. Further, the court is enjoined to adhere to the principle of inclusiveness. In the case of manslaughter, the court needs to take into account the views of the victim's family as was considered to be one of the factors to be taken in to account in the I.P. Venonica Gitahi (Supra case).
20. In imposing a sentence, the court must be guided by the Judiciary Policy Guidelines that steer the court towards meting out a sentence that will attain the objectives of retribution, deterrence, rehabilitation, restorative justice, denouncing the offender, among others.
21. I have considered the Application for review of the sentence upon taking into account the above mentioned principles and objectives of sentencing. The Applicant was convicted on his own plea of guilty. He saved the court's time. He was a first offender. Upon conviction, he expressed remorse and pleaded for forgiveness. The trial court then stated:-

“accused person be and is hereby sentence (sic) to fifteen (15) years imprisonment.”

The sentence did not capture what guided the court in arriving at the fifteen (15) year term. It did not make reference to the mitigating factors. The court did not also call for a pre-sentence report to aid it in making its decision. The pre-sentence report was crucial to the determination of the length of the sentence to be imposed. This is therefore a suitable case for sentence review.

22. Having taken into account the mitigating factors and upon considering the sentence review report, I find that the Applicant has taken responsibility for his offence, and in his four (4) years in custody has achieved rehabilitation to a great extent. However, I have also considered the fact that the Applicant mercilessly killed his hapless grandmother in a gruesome manner. The review to a non-custodial sentence at this stage is not suitable as the objective of retribution and denunciation of the offence is yet to be achieved.



23. Having taken all circumstances into account, I do hereby set aside the sentence of fifteen (15) years imprisonment and substitute it with a sentence of seven (7) years.

24. The Court so orders.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 16TH DAY OF DECEMBER 2024.

A. C. BETT

JUDGE

In the presence of:

The Applicant in person

Ms. Chala for the Respondent

Court Assistant: Polycap

