



**Republic v Mutelwa (Criminal Case 6 of 2023)
[2024] KEHC 15634 (KLR) (9 December 2024) (Sentence)**

Neutral citation: [2024] KEHC 15634 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE 6 OF 2023
DR KAVEDZA, J
DECEMBER 9, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

AMOS WANJALA MUTELWA ACCUSED

SENTENCE

1. The accused was charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code Cap 63 Laws of Kenya. The particulars of the offence are that on 30 September 2018 at about 10:00hrs, at Kangemi estate in Sodom section within Nairobi County murdered Judith Negesa Nafula. The Convict pleaded not guilty to the offence. By a judgment delivered by Hon Justice JM Bwonwong'a on 15th March 2023, the Convict was found guilty of Manslaughter contrary to section section 202(1) as read with section 205 of the Penal Code. The learned Judge proceeded to convict him accordingly.
2. The Matter then proceeded to Sentence Hearing on 20th November 2024. The Learned Counsel for the Convict submitted at length to the effect that:

The Convict is remorseful and seeks forgiveness of the court. He has learnt alot while in remand for the past 7 years. He did not commit the offence willingly and only acted in self defence. He has undergone various courses while in remand and has since reformed. He will not commit the offence again, he is a good Christian. He lost his father while in remand and needs to take care of the children who are since living with the greatgrandmother. He also needs to take care of his mother as he is the only son. He prays for a non-custodial sentence
3. The Learned Counsel for the Prosecution was of a different opinion. Ms Maina relied on the sentencing guidelines 2023 as well as the Probation report. She referred the court to page 4 of the report where the Convict does not appear remorseful for the offence. Ms Maina summarised the record of the report



to show a person who is not remorseful but views himself as the victim instead of being a perpetrator of the offence. Ms Maina also pointed out the aggravating circumstances under which the offence was committed; a knife was used and the Convict stabbed the victim severally. Further the victim was only 24 years old and has left behind three children. Finally, the Convict was sober while committing the offence and he should get a custodial sentence.

4. Before the sentence hearing date, the Court had directed the Probation officer to file a pre-sentence report which should be inclusive of the views of the victims. The Probation officer's report was filed in court on 6th March 2024.
5. The Probation Officer's Report indicates the Convict is from a polygamous family and the sole son of his mother among nine children. His mother and siblings depend on him. The family described him as a hardworking Christian and expressed shock at his offence. They pleaded for leniency and pledged to support his rehabilitation, praying for a non-custodial sentence. The report states the Convict lived with the victim, who was a housewife. They had separated before the incident due to ongoing domestic conflicts. They had no children together, though the victim had two children from a previous relationship.
6. The Convict had moved on with another partner, with whom he had a child, though he did not disclose this during his probation interview. He admitted to alcohol use before the incident. The report confirms no history of drug abuse and that he was not under the influence of substances during the offence.
7. Regarding the circumstances of the offence, the Convict claims he reached for a bag containing his clothes when the victim attacked him with a knife. He sustained injuries to his chest and three fingers. During the struggle, the victim allegedly stabbed herself. The Convict seeks leniency and a non-custodial sentence. The victim's family opposes leniency. The victim, aged 24, had been in a relationship with the Convict for six years and left behind two children in grade six, now living with their great-grandmother. The family fears for the safety of the victim's mother, who resides in Bungoma, where the Convict and his family are from.
8. The Probation Officer recommends that the Honourable Court exercise discretion in determining an appropriate sentence for the Convict.
9. This hearing on sentencing was held pursuant to the [*Muruatetu, Francis Karioko & another v Republic & 6 others*](#) Petition 15 & 16 of 2015; [2017] KESC 2 (KLR) decision, which determined that before sentence, mitigating circumstances must be heard by the court. Such hearing, the Supreme Court held, constitutes the Convict's right to a fair hearing under Article 50 (2) of the [*Constitution*](#) at which a fair and due consideration of the factors set out in *Muruatetu* must be considered.
10. The [*Judiciary Sentencing Guidelines, 2016*](#) and the NCAJ [*Sentencing Policy Guidelines 2023*](#) contain factors to be considered at sentencing and also the objectives of sentencing. Sentencing is supposed to serve the following purposes:
 - a. Retribution
 - b. Deterrence
 - c. Rehabilitation:
 - d. Restorative justice
 - e. Community protection



- f. Denunciation
 - g. Reconciliation
 - h. Reintegration
11. In deciding whether to impose a custodial or a non-custodial sentence, the following factors should be considered:
- a. Gravity of the offence
 - b. Criminal history of the offender
 - c. Conduct of the Offender
 - d. Protection of the community
 - e. Offender's responsibility to third parties
12. I have considered these factors, the victim's views and the other views in the Probation officer's report, I have also considered the circumstances under which the offence was committed.
13. The victim impact statement in the Probation Officer's Report reflects the family's opposition to leniency, seeking justice from this Court. The case involves a 24-year-old woman who lost her life in a brutal manner. Evidence from Pw1 and Pw4 confirmed she was stabbed by a man with whom she once had a relationship.
14. The post-mortem report indicates the deceased suffered multiple stab wounds, including deep wounds to her right upper arm, lower chest, and left lower chest, with additional shallow wounds on her thigh, forearm, and finger. The cause of death was exsanguination from penetrating chest and abdominal trauma.
15. The gruesome nature of the offence was orchestrated by the Convict. While he seeks leniency, the victim's family calls for a custodial sentence.
16. In mitigation, the Convict claimed remorse and referenced rehabilitation efforts. However, his actions speak louder than words.
17. The Court observed no genuine remorse during mitigation. The Probation Report reveals the Convict's strategy of denial, omission, and deceit. His claim that the victim stabbed herself is a blatant falsehood disproven by the post-mortem findings. Additionally, his assertion of alcohol use is contradicted by evidence showing he was sober at the time. The Court finds the Convict to be devoid of remorse.
18. Having considered the Probation Report, the Convict's Family's position in the matter, the victim's statement and the community's attitude towards the offender, I am convinced that the Convict committed a horrendous crime and should serve a prison sentence. This is because a life was lost and a non-custodial sentence could be seen to be applauding the commission of the offence. As the Court held in *Republic v Mudanya* (Criminal Case 22 of 2017) [2023] KEHC 3889 (KLR) (2 May 2023) that

The purpose of sentencing is to contribute to the respect for law, maintain a just peaceful and safe society and also to suppress future crime. The object of sentencing is to denounce unlawful conduct; deter the offender; and to send a message to the public that the behavior witnessed in this case is not to be tolerated...



The convict in stabbing the deceased had absolutely no compassion for life. The killing of the deceased was unspeakable selfish act of violence, the stabbing of the deceased will be denounced by this Court and the sentence of this Court will reflect that denunciation and it must deter not only the convict but also others from committing such a crime. The sentence will also be geared at rehabilitating the convict.

19. The penal section for the offence of manslaughter is contained in section 205 of the Penal Code which provides:-

Any person who commits the felony of manslaughter is liable to imprisonment for life.

20. I have considered the mitigation made by and on behalf of the convict. I have also considered that the aggravating factor of this case which is that the convict stabbed the deceased multiple times and the fact that he is not remorseful. Accordingly, the appropriate sentence is thirty (30) years imprisonment. The sentence shall run from 4th October 2018, the date of his arrest pursuant to section 333(2) of the Criminal Procedure Code.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 9TH DAY OF DECEMBER 2024

D. KAVEDZA

JUDGE

In the presence:

Ms. Maina for the State

Ms. Ajiambo for the Accused

Achode Court Assistant

