



**Republic v Lawi (Criminal Case E006 of 2023)
[2024] KEHC 15386 (KLR) (5 December 2024) (Sentence)**

Neutral citation: [2024] KEHC 15386 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E006 OF 2023
HM NYAGA, J
DECEMBER 5, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

MOGAKA LAWI 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.
2. At the conclusion of the trial, the Judge who heard the case was transferred to another station. In the circumstances, it now falls upon the succeeding judge to make out the sentence.
3. By virtue of Section 201 of the Criminal Procedure Code (CPC) the provisions of Section 200 CPC are applicable to trials before the High Court. Section 200(2) thereof provides that;
 - (2) Where a magistrate who has delivered judgment in a case but has not passed sentence, ceases to exercise jurisdiction therein and is succeeded by a magistrate who has and exercises that jurisdiction, the succeeding magistrate may pass sentence or make any order that he could have made if he had delivered judgment.
4. In exercising the powers as above, I have to bear in mind that I did not hear the witnesses in court. Nevertheless the court record is very clear on the circumstances under which the offence was committed. The pre-sentence Report has also been filed. The mitigation by the accused through his advocate, and the initial closing submissions are also on record.
5. I also asked the parties to make submissions on sentence on 12/10/2024, which they did. It suffices to state that I have considered all of the above.



6. From the post-mortem report produced as an exhibit, the deceased had a slit throat that severed her major blood vessels. She bled to death.
7. Clearly, the accused was intent on ensuring that the deceased never survived. He literally slaughtered her like a chicken would be in preparation for a meal.
8. Following the decision in the celebrated case of Francis Muruatetu and Another Vs Republic (2017) eKLR, the mandatory death sentence has been found to be unconstitutional. That does not mean that the court cannot impose the death sentence if it feels that the same is appropriate in the circumstances. Indeed, the court retains the direction to make out the death sentence. This was confirmed by the Supreme Court in the stated case of Francis Muruatetu and Another Vs Republic (Supra).
9. In the stated case the Supreme Court of Kenya reiterated the factors to be considered at the sentencing stage. These include;
 - 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. The Judiciary sentencing guidelines (2023) also give guidance on sentencing. They state as follows;

Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with each other – insofar as possible, sentences imposed should be geared towards meeting the objectives in totality.

Retribution: To punish the offender for their criminal conduct in a just manner.

- ii. Deterrence: To deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing offences.

Rehabilitation: To enable the offender to reform from his/her criminal disposition and become a law-abiding person.

Restorative justice: To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs.

Community protection: To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.

Denunciation: To clearly communicate the community's condemnation of the criminal conduct.

Reconciliation: To mend the relationship between the offender, the victim and the community.

Reintegration: To facilitate the re-entry of the offender into the society.



11. Having considered the matter, including all aggravating and mitigating factors, I am of the view that the accused does not deserve an iota of mercy. He inflicted unbearable pain on the deceased who was his lover. The deceased even in her death deserves justice.
12. In the circumstances, I hereby sentence the accused to thirty (30) years imprisonment.
13. Under the provisions of Section 333(2) of the Criminal Procedure Code, the sentence will be deemed to commence from 17th January, 2023 when the accused was first arraigned in court and remanded in custody.
14. Right of appeal explained to the accused.

DATED, SIGNED & DELIVERED IN OPEN COURT AT MERU THIS 5TH DAY OF DECEMBER, 2024.

H.M. NYAGA

JUDGE

In the presence of:

