



**Republic v M'Arimi (Criminal Case 86 of 2019)  
[2024] KEHC 15455 (KLR) (5 December 2024) (Sentence)**

Neutral citation: [2024] KEHC 15455 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE 86 OF 2019  
HM NYAGA, J  
DECEMBER 5, 2024**

**BETWEEN**

**REPUBLIC ..... RESPONDENT**

**AND**

**KITHAKA M'ARIMI ..... 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. The case was heard by three difference Judges. At the conclusion of the trial, the accused was found guilty of the offence of the offences of murder and was duly convicted by my sister Lady Justice T. W. Cherere on 25/04/2024. The said Judge was transferred from the station before she could pass 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. 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*).
6. 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.
7. 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.

8. I have considered the aggravating and mitigating circumstances of the case.



9. The accused was an assistant chief. He purportedly arrested the deceased with alleged possession of illegal alcoholic drinks. The deceased died shortly after his arrest and the cause of death was found to be asphyxiation caused by strangling.
10. Accused ought to have known better than to take the law into his own hands. In fact he was duty bound to protect the suspect he had in his custody and if needed hand him to the relevant authorities. He failed to do so. His actions led to the needless death of the deceased.
11. In my view, there is need to mete out a deterrent sentence to ensure that the accused pays for his actions and also send out a signal to those in authority that they should use their powers responsibly.
12. Having considered the matter, I hereby sentence the accused to Ten (10) years imprisonment.
13. Under Section 333(2) of the [Criminal Procedure Code](#), the sentence shall be commence from 20<sup>th</sup> April, 2024 when he was convicted and his bond was cancelled.
14. Right of Appeal is explained.

**H.M. NYAGA**

**JUDGE**

**DATED, SIGNED & DELIVERED IN OPEN COURT AT MERU THIS 5<sup>TH</sup> DAY OF DECEMBER, 2024.**

**H.M. NYAGA**

**JUDGE**

In the presence of:

