



**Republic v Muthomi (Criminal Case E031 of 2024)
[2024] KEHC 15503 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15503 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E031 OF 2024
HM NYAGA, J
DECEMBER 5, 2024**

BETWEEN

REPUBLIC RESPONDENT

AND

ANDREW MUTHOMI ACCUSED

RULING

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 particulars are that on the 10th day of March, 2024 at Amatu Village in Kianjai Location, Tigania West Sub-county, within Meru County, he murdered Francis Kimathi.
3. The accused pleaded not guilty and the case was set down for hearing.
4. Later the accused and office of the Director of Public Prosecutions entered into a plea agreement which was admitted by the court pursuant to Section 137 of the Criminal Procedure Code.
5. Pursuant to the plea agreement, the charges were substituted for those of manslaughter, contrary to Section 202 as read with Section 208 of the Penal Code.
6. The particulars of the substituted charges were that on 10th March, 2024 at Amatu Village in Kianjai Location, in Tigania West Sub-county within Meru County, the accused unlawfully killed Francis Kimathi.
7. The accused pleaded guilty to the substituted charge and he was duly convicted thereon.
8. Under Section 329 of the Criminal Procedure Code, as read with Section 329A thereof, the court received a victim impact statement from the deceased’s mother, one Evangeline Nkatha. All she could state was that the court should do its work.



9. In the submissions on sentence, the prosecutor pointed out to the court that the deceased died a painful death. That there was no provocation. That a dangerous weapon was used.
10. Advocate for the accused in her submissions and mitigation stated that the court should note that the accused has not wasted its time. That the accused has a family. That he is remorseful for his actions, which arose from a quarrel between him and the deceased.
11. I have duly considered the circumstances surrounding the commission of the offence. It is not clear what transpired that day. The accused and the deceased were seen together that day, only for the deceased to end up dead. Deceased had a stab wound on his shoulder.
12. It is trite law that sentencing is at the discretion of the court, guided by the relevant laws and authorities.
13. The court is enjoined to consider the aggravating and mitigating circumstances. Each case has to be decided on its own set of circumstances.
14. In *Francis Kariuki Muruatetu Vs Republic (2017) eKLR*, 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.
15. 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.

16. Therefore sentencing is not just an abstract act by the court. It is a tailor made decision to ensure that all the parties involved get justice.
17. Having considered the circumstances of the case, I am of the view that a non-custodial sentence is not a suitable option. The accused needs to atone for his acts of indiscretion, by opting to use violence to settle a dispute.
18. The accused is sentenced to Twelve (12) years imprisonment.
19. Under section 333(2) of the Criminal Procedure Code, the sentence to be deemed to commence on 11th April 2024, when he was first arraigned in court and remanded in custody.
20. Right of appeal is explained.

H.M. NYAGA

JUDGE

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

H.M. NYAGA

JUDGE

In the presence of:

