



**Republic v Jane Muthoni Mucheru & Isaack Ng'ang'a Wambui alias Gikuyu
(Criminal Case 45 of 2018) [2021] KEHC 6576 (KLR) (3 June 2021) (Sentence)**

Republic v Jane Muthoni Mucheru & another [2021] eKLR

Neutral citation: [2021] KEHC 6576 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU**

CRIMINAL CASE 45 OF 2018

JM NGUGI, J

JUNE 3, 2021

BETWEEN

REPUBLIC PROSECUTOR

AND

JANE MUTHONI MUCHERU 1ST ACCUSED

ISAACK NG'ANG'A WAMBUI ALIAS GIKUYU 2ND ACCUSED

SENTENCE

1. Mr. Solomon Mwangi Mbuthi, a former Principal of Kiru Boys High School (“Kiru Boys”) in Murang’a, (hereinafter, the “Deceased”) died, by all accounts, a brutal death. Dr. Peter Ndegwa, the pathologist who conducted post-mortem examination on the body concluded that the cause of death was asphyxia neck compression due to manual and ligature strangulation. The body also had several other injuries including on the occipital region and frontal scalp, upper arms and knees. Toxicological results from specimens harvested from the body showed that Xylazine, a strong sedative drug commonly used in veterinary treatments, was present in the body.
2. In a judgment dated 22/04/2021, this court outlined in graphic detail the circumstances under which the Deceased was murdered. In short, the court found that the 1st accused Person, scorned by suspected infidelity by the Deceased, who was her husband, solicited the help of a friend, Nelson Magati Njiru, to plan for the murder of her husband. In turn, Mr. Njiru introduced the 1st accused Person to the 2nd accused Person and one other person to implement the murderous plan. The plan – which included a combination of administering drugs to stupefy the Deceased and then manually strangling him -- only succeeded at its second attempt.
3. When it succeeded, the evidence showed, the 1st accused Person lured the Deceased out of the home into the open fields of Ndaraguo and Karakuta after administering the Xylamine. The 2nd accused



- Person, then, took over – manually strangling him with a rope which the 1st accused Person had strategically placed in her hired vehicle. They then left the Deceased tied to a tree, his hand tied together, gunny bags covering his body.
4. Having convicted the two accused Persons, the court conducted a Sentence hearing on 18/05/2021 in order to determine the appropriate sentence. The Prosecution, through Ms. Mwaniki, filed submissions and a Victim Impact Statement (by one of the Deceased’s students) and orally submitted as did Mr. Mathenge, counsel for the family of the Deceased. Mr. Mathenge filed a list of authorities and a Victim Impact Statement. The Victim Impact Statement is by Mary Njoki Mwangi, a sister to the Deceased, who filed it on behalf of the whole family.
 5. Mr. Njanja, counsel for both accused Persons, orally submitted. In short, Mr. Njanja submitted that the accused persons maintained their innocence. He maintained that the 1st accused person and her children were the true victims of the murder of the Deceased and asked the court to bear that in mind in pronouncing itself on sentence. The children of the Deceased and the 1st accused person, Mr. Njanja submitted, are now on their own and they are going through traumatic times both because of financial want and the absence of both parents. Indeed, one of the children appeared before the court and pleaded with the court to consider non-custodial sentence for her mother. She is not persuaded, despite this court’s judgment, that her mother was responsible for her father’s death.
 6. On the other hand, the 2nd accused person pleaded with the court to consider that he was the sole bread winner for his young family, and that he was the only person in his extended family who took care of his aging mother and his sister.
 7. Ms. Mwaniki, the prosecutor, urged the court to mete out the ultimate penalty: the death penalty for the murder here. She submitted that even though both accused persons may be treated as first offenders, the aggravating factors in this case call for the maximum sentence. She pointed out the following as aggravating circumstances:
 - a. That the murder was committed in a cruel and depraved manner;
 - b. That the murder was planned;
 - c. That the 1st accused person was so determined to end the Deceased’s life that she forged ahead through three previous attempts;
 - d. That the murder had serious impact on the Deceased’s siblings, students and the teaching fraternity in Murang’a County; and
 - e. That the accused persons had not shown remorse in their conduct and words.
 8. Mr. Mathenge reiterated these points. Both Mr. Mathenge and Ms. Mwaniki pointed out to the court that the death penalty is still legal in Kenya even after the Supreme Court decision in *Francis Karioko Muruatetu v Republic & 6 others* [2017] eKLR. They relied on *Ruth Wanjiku Kamande v R* [2018] eKLR (which was affirmed by the Court of Appeal). In that case, the High Court sentenced the accused person, a girlfriend to the Deceased, to death because of the manner in which she had killed the Deceased; a manner which the court found showed a clear intention to cause the Deceased pain, suffering and death. The accused person had stabbed the Deceased twenty-five (25) times in his hands, legs, head, abdomen, back and shoulders.
 9. I have carefully considered all the factors in his case on an individualized basis as I am required to do. I have considered the following three mitigating factors.
 10. First, both accused persons are first offenders.



11. Second, I have also considered that the 1st accused person has young children who need her guidance and assistance. Similarly, the 2nd accused person has a young family and was the sole bread winner of the family. I also considered the representations by the 1st accused person's (and Deceased's) daughter as a mitigating factor.
12. These mitigating factors must be balanced with aggravating circumstances to arrive at an appropriate sentence.
13. First, the killing here was not only pre-meditated but it involved a high degree of planning. Evidence showed that the 1st accused person was so intent on having her husband killed that she had arranged for several attempts to have him killed. The picture that emerges from the evidence is one of a depraved and vengeful spouse, not an accidental killer who poorly responded spontaneously to immediate circumstances. Both the accused persons had many opportunities to walk back from their heinous plans; and with each opportunity, they chose the path of death.
14. Second, the manner in which the Deceased was killed is an aggravating factor. The Deceased was stupefied to render him helpless. He was then manually strangled in two stages – first inside the vehicle – and then at the ultimate site where his body was found. By the time death came, the Deceased was too weak and his faculties robbed of their abilities that he could not even plead for mercy from his killers. He was, then, left in a thicket perhaps in the hope that his body would never be found.
15. Third, I took into consideration the sentiments of the family of the Deceased about the impact the death of the Deceased has had on their family.
16. There is no question that the circumstances of this murder are, indeed, gravely aggravating. They call for a very stiff sentence to match the ruthlessness of the murder and its effect on the victims and the society. In this case, I have come to the conclusion that a stiff custodial sentence is merited as the only suitable way of expressing society's condemnation of the accused person's conduct or deter similar conduct in the future. Having considered all the mitigating circumstances and aggravating circumstances, I am of the view that a custodial sentence of thirty years (30) for each of the two accused persons is the appropriate sentence.
17. Consequently, in my view, a fit sentence that properly balances the mitigating circumstances with the aggravating circumstances is a sentence of thirty years imprisonment (30) for each of the two accused persons and I, accordingly, sentence each of the Accused persons to that period. The sentence period for the 1st accused person shall run from 22/11/2016 when she was first arraigned in court and has remained in custody since then. The sentence period for the 2nd accused person shall run from 28/12/2016 for the same reason.
18. Orders accordingly.

DATED NAKURU THIS 3RD DAY OF JUNE, 2021

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JOEL NGUGI

JUDGE

NOTE: This judgment was delivered by video-conference pursuant to various Practice Directives by the Honourable Chief Justice authorizing the appropriate use of technology to conduct proceedings and deliver judgments in response to the COVID-19 Pandemic

