



**Republic v Yator (Criminal Case E002 of 2023)
[2025] KEHC 15481 (KLR) (29 October 2025) (Sentence)**

Neutral citation: [2025] KEHC 15481 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E002 OF 2023
RB NGETICH, J
OCTOBER 29, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

JONATHAN KIPROP YATOR ACCUSED

SENTENCE

1. The accused Jonathan Kiprop Yator has been charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the charge were that on the night of 22nd day of December 2022 at Borowonin sublocation Kapropita location in Baringo central subcounty within Baringo county, he murdered William Kiptongony.
2. The accused denied the charge and on 24th July 2025, this court found the accused guilty and convicted him of the offence of murder contrary to section 203 as read with 204 of the penal code. Upon the conviction, the prosecution informed the court that the accused has prior record of year 2017 and requested for time to get the record. The court directed that the accused’s previous record and presentence report be availed. On 1st October 2025, the prosecution counsel Ms. Kosgei informed court that although they are aware that accused has previous records, they had not been able to retrieve the same and prayed that he be treated as a first offender.
3. The next day on 2nd October 2025, the prosecution counsel informed court that they had established that the accused had previous record vide criminal case no.492 of 2018 at Kabarnet law court for the offence of grievous harm to his father who is the deceased herein and was sentenced to 5 years imprisonment but his sentence was reduced in the year 2021 to community service order .She urged this court to consider the circumstances under which the deceased met his death and relate to previous case where accused had done grievous harm to deceased. She submitted that it shows clearly that he had intentions of killing the deceased which he made good by killing him. She prayed for maximum sentence of death while submitting that she is alive to the decision of supreme court in Muruatetu



vs rep [2017] on the issue of mandatory death sentence and submit that the supreme court held that mandatory nature of death sentence is unconstitutional but did not declare it illegal. She relied on the case of Rep vs Joseph Kuria Irungu & Another [2016] eKLR where the court held that in exercising discretion in sentencing, the need to look at the legality of the sentence and proceed to sentence accused to death penalty as provided under the law.

Mitigation

4. The defence counsel Mr. Kipkulei mitigated on behalf of accused and submitted that the accused is remorseful. That he has admitted that he murdered his father and the circumstances are that both accused and deceased were drunk and he acted out of provocation which made his temper to rise and led him to commit the offence.
5. Counsel submits that the accused is 36 years old and has one child who require care from both parents. He submitted that even though accused is not a first offender, the court should impose a fair sentence and also that accused is undergoing anger management while in prison and he has obtained 4 certificates in theology and is willing to go back to society a rehabilitated person upon being taken through anger management.
6. Counsel submitted that he is aware that accused's family is not willing to accept him back but discretion on sentence falls with the court. He prayed for lenient sentence and proposed a favorable custodial sentence so that the accused can have a chance to go back to the society after the sentence.

Determination

7. Under section 204 of the Penal Code, the sentence prescribed for the offence of murder is death. However, the Supreme Court in Francis Karioko Muruatetu & Another v Republic [2017] eKLR declared the mandatory nature of the death penalty unconstitutional, holding that sentencing is a discretionary judicial function. Courts are now enjoined to consider the peculiar circumstances of each case, the offender's personal situation, and the objectives of sentencing.
8. The objectives of sentencing as set out in the Sentencing Policy Guidelines (2016) include retribution, deterrence, rehabilitation, restorative justice, community protection, and denunciation. The appropriate sentence must therefore reflect a balance between the rights of the offender, the interests of the victim's family, and the broader interests of justice.
9. From pre-sentence report, the accused is not remorseful. He says he committed the offence out of self defence. I take note of the fact that accused is not a first offender. The report indicate that accused had earlier on caused grievous harm to his father who is the deceased herein. The fact that he had previously inflicted serious injuries on the deceased and also attempted to harm his mother as indicated in pre-sentence report are aggravating factors herein. Defence counsel indicated that the accused and deceased were drunk and the he acted out of provocation but the fact that he had inflicted serious injuries on the deceased before clearly show that he had no regard for his father and despite being jailed for grievous harm, he did not reform. The victim's mother and siblings are still bitter and are opposed to non-custodial sentence as they fear for their lives if accused is released. Considering circumstances surrounding the offence herein and the sentiments given by accused's/victim's family, community members and the local administration, I am inclined to impose a long custodial sentence which will serve as deterrent and will also allow rehabilitation of accused while in prison.
10. Final Orders: -



- a. The accused, Jonathan Kiprop Yator, is hereby sentenced to thirty (30) years imprisonment for the offence of murder contrary to section 203 as read with section 204 of the Penal Code.
- b. The period served in remand to be computed in the sentence above.
- c. Right of appeal within 14 days from today's date.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 29TH DAY OF OCTOBER, 2025.

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RACHEL NGETICH

JUDGE

In the presence of:-

Ms. Bartilol for State.

Mr. Kipkulei for accused.

Accused present.

CA, Elvis/Momanyi.

