

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL CASE NO.10 OF 2019

REPUBLIC..... PROSECUTOR

VERSUS

NAOMI NECHESA SANYA..... 1ST ACCUSED
FAITH KANANU.....2ND ACCUSED

RULING ON SENTENCE

1. The accused person, **Naomi Nechesa Sanya** together with another already acquitted are charged with the offence of **Murder contrary to Section 203 as read with Section 204 of the Penal Code.**

The Particulars of the offence are that:-

“On the 14th day of January, 2019, at an unknown time, in Londiani, Kericho County, the accused persons jointly murdered FELIX NG’ANG’A.”

2. The accused persons was arraigned in court on 14th March, 2019 and she pleaded **“Not Guilty”** to the offence on 5th March, 2019 after being confirmed mentally fit to plea to the said offence and assigned legal representation.

Murder. The trial commenced on 23rd September, 2019.

3. The case proceeded for full trial from 23rd September, 2019 and on 31st October, 2024, the accused person was found guilty of the offence of Murder whereby he was accordingly convicted.
4. For determination now is the crucial part in a criminal process, which is sentencing and this involves meting or imposing punishment to offenders before a court for the crime they will have been found guilty of. In doing this, courts take into account various factors, which, apart from nature and gravity of the offence an offender may be facing, (which more often than not may be informed by the charge and evidence adduced), they also need information on the offenders personal circumstances, the victim's and community's attitude towards the offender to inform on their decision to sentence.
5. In a South African Case of **State –vs- Lebohang Lekhooanda and Vusumiz, MSI Case No.CCI/2021**, the High Court had this to say on the process of sentence:-

“The court has reached a difficult stage of proceedings that of imposing appropriate sentence to the offender before court. This process involves a very delicate act, taking into account the seriousness of the offences perpetrated by the offender, their personal circumstances and the interest of society. In the case of S.

V. Zinn [1969] 92) SA 537(A), this is what is mostly referred to as the Triad. The court must also consider the recognized objectives of sentencing by prevention, rehabilitation, deterrence and retribution.”

6. In S. –vs- R.O. and Another, Heher J. stated the following at **Paragraph 30 of the Judgment:-**

“Sentencing is about achieving the right balance or in more high flown terms, proportionality. The elements at play are the crime, the offender, the interest of society with different nuance prevention, retribution and deterrence. Invariably, there are overlap that render the process unscientific, even a proper exercise of the judicial function allows reasonable people to arrive at different conclusions”.

7. In the case of Francis Karioko Muruatete & Another –vs- Republic[2017] eKLR, the Supreme Court stated that:-

[41] It is evident that the trial process does not stop at convicting the accused. There is no doubt in or minds that sentencing is a crucial component of a trial. It is during sentencing that the court hears submission that impact on sentencing. Tis necessarily means that the principle of fair trial must be accorded to the sentencing stage too”.

8. In addition, the Supreme Court of Kenya went on to set out guidelines that a court should consider in sentencing of an accused convicted for the offence of

Murder and or in re-sentencing of offenders as follows:-

[71]As a consequence of this decision, Paragraph 6.4-6.7 of the guidelines are no longer applicable. To avoid a lacuna, the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

- (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.*

[72].We wish to make it very clear that these guidelines in no way replace judicial discretion. They are advisory and not mandatory. They are geared to promoting consistency and transparency in sentencing hearings. They are also aimed at promoting public understanding of the sentencing process. This notwithstanding, we are obligated to point out here that Paragraph 25 of the 2016 Judiciary [Sentencing Policy Guidelines](#) states that:

25.Guideline Judgments

25.1Where there are guideline judgments, that is, decisions from the superior courts on a sentencing principle, the

subordinate courts are bound by it. It is the duty of the court to keep abreast with the guideline judgments pronounced. Equally, it is the duty of the prosecutor and defence counsel to inform the court of existing guideline judgments on an issue before it.

9. Informed by the above cited decisions, the court called for a Social Inquiry to be conducted in respect of this case and the Probation and After-care Services Department and for a Pre-sentence Information Report to be filed in court to assist it in arriving at a well informed decision on the sentence to impose on the offender in this case. The Pre-sentence Report was filed on 6th December, 2024 in which the Probation Officer indicated that in conducting a Social Inquiry, it considered the accused person's family background, the personal history, circumstances of the offence, attitude towards the offence, view of the victim's family, community's attitude toward the offence and the offence to come up with the conclusion and recommendations on what is the appropriate sentence to be imposed for the accused.

10.I have read through the Pre-bail Information Report filed by the Probation Officer and it is reported therein that the accused is aged 30 years old and comes from a humble background in Kakamega and her education was interrupted due to financial challenges. It is reported that the accused worked

in a Salon before moving to Nairobi and when she lost her job, she went back to her home – Kakamega. That, it was while in that desperate need of getting a job that she was approached by a man named Erick Kimiru who promised her a job for a salary of Kshs.50,000 which is what led to her involvement in the tragic abduction and death of the four(4) year old, the deceased herein.

11.It is also reported by the Probation Officer that she deeply regrets her actions for which she is remorseful and apologizes to the victim’s family and her own family who include her mother and siblings, and despite their financial struggles state support her. According to the findings, the accused is reported to be a first time offender, having been a law abiding citizen.

12.The Probation Officer reports that the victim’s family are still mourning the loss of their child and all they seek for from the court is justice.

13.Counsel for the accused mitigated on her behalf and urged court to consider that the accused was a first time offender and had a limited role in the commission of the offence. According to counsel, the accused is a peace loving Kenyan of good record, hence her co-operation in the proceedings and trial. She urged that the accused was remorseful of the unfortunate events. Counsel also submitted that the accused was a prime candidate for reform, as one of the tenets of

sentencing. Further, counsel mitigated that the accused was her family's sole bread winner and her son's sole caretaker hence beseeches the court for leniency in sentencing her as her absence would put a heavy financial and emotional burden on her family, which is willing to assist her in adoption into society.

14. In further mitigation, the accused admitted her mistake and asked for forgiveness from the court, the family of the deceased and the society. She thanked the deceased's family for their forgiveness and told court that she has and continues to suffer for the offence she committed and agreeing to be used negatively. She explained that she agreed to commit the offence so she would earn money to enable her treat her mother who is ailing from cancer and her son who is a sickler. She admitted that the deceased fell sick in her hands, whereby he convulsed, foamed and died. She urged the court to grant her a second chance since she was a 1st officer.

15. The accused informed court that for the period she has been in custody, she had reformed since she had learnt about religion and knew God. She presented a recommendation from the church, Certificate for Bible Courses by Discover Bible School, Public Scripture reading being Faith, the Safari ya Mfungwa Programme Initiative, Bible Correspondence Course, a Diploma in Theology, a

Counselling and Trauma Healing Course, trained as a Paralegal, Talent Certificate in Music together with Dress-making.

16. According to the accused, these courses have enabled her to be able to control herself, is able to advise others to be law abiding citizens and is equipped with skills that would keep her off trouble and even start a business of her own. She urged the court to give her a second chance in life by considering the period she has spent in custody during trial and sought for leniency and a non-custodial sentence undertaking not to re-offend but counsel others not to go in the way she did.

17. I have considered the nature of the offence the accused person has been convicted of, the circumstances under which the same was convicted, the accused person's records, mitigation, alongside the Pre-sentence Report together with the recommendation therein.

18. It is worth noting that the prescribed punishment for the offence of Murder under **Section 204 of the Penal Code** is a mandatory death sentence. However, the mandatory sentence is rendered unlawful in the case of Supreme Court of Kenya in the **Constitution Petition No.15 and 16 of 2014, Francis Karioko Muruatetu & Another –vs- Republic [217]eKLR**. This decision gave

discretion to the courts to pass appropriate sentence on a case to case basis.

19. In the instant case, it suffices to note that the deceased was a child aged four (4) years old when he met his death. It is saddening to the family of the deceased and society at large that the life of an innocent child was cut short by actions of the 1st accused person herein without justification. The child's death left his parents in anguish over the big loss that it would not be in the interest of justice to release the accused persons on a non-custodial sentence.

20. The victim's life was cut short before the child could understand what was going on in his life. This is against the provisions of **Article 26 of the Constitution** which provides for the right of life in the following terms:-

[26]. (1) Every person has the right to life.

21. In view of this, in balancing the scales of justice, this Court proceeds to invoke its discretion and orders that:-

a) The accused be and is hereby sentenced to serve a period of fifteen (15) years imprisonment.

b) The time spent by the accused in custody be and is hereby considered and to be computed from the time she was arrested to date.

c) Right of appeal fourteen (14) days is explained to the accused person.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT
KIAMBU THIS 6TH DAY OF FEBRUARY....., 2025.**

**D. O. CHEPKWONY
JUDGE**

ORIGINAL