

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAJIADO**

**CRIMINAL CASE NO. 19 OF 2019**

**REPUBLIC.....PROSECUTOR**

**R**

**VERSUS**

**GABRIEL**

**TIEKO.....ACCUSED**

**SENTENCE RULING**

1. Pursuant to a plea bargain agreement, the Accused pleaded guilty to the offence of Manslaughter contrary to Section 202(1) as read with Section 205 of the Penal Code. The Accused was treated as a first offender. His counsel gave the mitigation address pointing to the long period of incarceration and therefore calling for a lenient sentence.
2. Sentencing is a vital part in the administration of justice. Thus, clause 4.6.1 of the Sentencing Guidelines (2023) provides inter alia that the sentencing process is an integral

part of the trial and is therefore subject to the fair hearing constitutional guarantees. The Supreme Court of India in the case of, **Antony Pareira V State of Maharashtra (2 AIR 2012 SC 3802)** held that that:

**"Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done"**

3. These views were reiterated by the Supreme Court of Kenya in **Francis Karioko Muruatetu & another v Republic [2017] eKLR** where it was held that although the death sentence provided for murder in the Penal Code remained lawful, the mandatory nature of the sentence was unconstitutional as it tended to take away the discretion of the court in sentencing. Directing that re-sentence hearings be conducted for affected convicts and prisoners, the court listed some mitigating factors applicable in a re-hearing sentence for the conviction of a murder charge as follows;

- (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.

4. The Supreme Court was also quick to add the caveat that:

**[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".**

5. Clause 1.3 of the Sentencing Guidelines (2023), identifies the objectives of sentencing as: -

**“a) Retribution: To punish the offender for his/her criminal conduct in a just manner. It serves to deter future crime. Victims and society might feel satisfied that the criminal justice system is functioning well when they learn that the offender has received an appropriate sentence for their crimes, which raises trust in the criminal justice system**

**b) Deterrence: To deter the offender from committing a similar offence or any other offence in future as well as to discourage the public from committing similar offences. Thus, it is divided into two components: individual and general deterrence. Individual deterrence is to dissuade the perpetrator with the objective to inflict a punishment severe enough to deter the offender from engaging in criminal activity. The convict is expected to be discouraged from committing crimes in the future as a result of the sentence. The society is the target of general deterrence.**

**Other people are deterred from committing those offences by the punishment meted out to those who commit them.**

**c) Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person. It aims at changing the offenders and make it easier for them to reintegrate into society, through a variety of programs and treatments. It focusses on treating the root reasons of criminal behaviour, such as dependency, mental health conditions, or a lack of education. The objective is to give the offender the resources and assistance they need to upon release, become law-abiding citizens.**

**d) 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. Any harm done to**

**the victim may be compelled to be repaired or restored by the court. The goal is to put the victim back in his pre-crime status or position. The goal of restoration is to make up for any harm the perpetrator has caused the victim.**

**e) Restitution deters crime by financially penalizing the offender. It is somewhat like a civil lawsuit damages judgement and occurs when the court directs the offender to compensate the victim for any injury. Restitution may be required in cases of financial loss, property damage, and, in rare cases, mental suffering. It may also take the form of a fine to help defray part of the expense of the criminal investigation and punishment.**

**f) Community protection: To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.**

**g) Denunciation: To clearly communicate the community's condemnation of the criminal conduct.**

**h) Reconciliation: To mend the relationship between the offender, the victim and the community.**

**i) Reintegration: To facilitate the re-entry of the offender into the society.**

**j) Incapacitation's main purpose is to simply keep offenders outside of society so that everyone is safe from their potentially harmful actions. A person convicted of a crime should not be permitted to mingle with the general public if there is no assurance that they will not commit the same crime again. In certain civilizations, punishment takes the form of death sentence, or it may entail a sentence of life in jail without the chance of release.”**

6. These guidelines apply to all criminal offences. In this instance, the Court has noted that the Accused was treated as

a first offender. The presentence report on record lacks a comprehensive background and personal history of the offender, while the views of the victim family were not obtained. It appears that the Accused himself was reticent concerning his personal circumstances. Thus, the presentence report was not very helpful. That said, the court considered the mitigation address, the circumstances of the offence, and the attitude of the Accused in light of the objectives of sentencing.

7. The Accused who visited the house of the deceased while armed with a *Maasai* sword fatally stabbed the deceased following a disagreement. He then fled the scene. Only to the victim's house a few days later for an unknown mission and was arrested when the deceased's wife raised an alarm. This subsequent conduct following an act of egregious violence meted on his unarmed victim discloses lack of introspection on the part of the Accused. Despite the gravity of the offence, the court noted that the Accused has been in custody since 2019.

8. In the circumstances, the court will sentence the Accused to serve 16 (sixteen) years imprisonment with effect from 24.11.2019 when he was arrested. Thereafter, he will be released on probation for 3 years to facilitate his reintegration back into society, as it does appear that the Accused lacks a supportive family structure.

**DELIVERED AND SIGNED IN OPEN COURT AT KAJIADO ON THIS 23<sup>RD</sup> DAY OF APRIL 2026.**



**C. MEOLI**  
**JUDGE**

**In the presence of:**

**For the State: Ms . Kambaga**

**For the Accused: Ms. Wasilwa**

**C/A: Lepatei**