



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Njuguna (Criminal Case 5 of 2018)
[2025] KEHC 9420 (KLR) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 9420 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL CASE 5 OF 2018**

GL NZIOKA, J

MARCH 26, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

DAVID KIMANI NJUGUNA ACCUSED

JUDGMENT

1. The accused was arraigned in court charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* (Cap 63) of the Laws of Kenya. He pleaded not guilty to the charge and the case proceeded to full hearing.
2. By a judgment dated 21st January 2025, the accused was found guilty of the offence and convicted accordingly. The court then called for the accused's records and pre-sentence report. The prosecution presented the accused's records indicating that he is a first offender. In the same vein, a pre-sentence report dated, 19th February 2025 was availed.
3. It is noteworthy that the pre-sentence report indicates that the accused father is deceased and he is the third born out of eleven (11) siblings though one (1) is deceased. That he dropped out of primary school in class 7 due to financial challenges and started doing casual jobs with his father in order to support his older siblings complete their education. Further, he married Ann Waithera and has two (2) children including the deceased herein although after the offence he separated with his wife.
4. However, he remarried one Lucy Wambui and have five (5) children together who reside at Mutonyora village on a piece of land the accused was given by his father. According to the report, the accused is on lifetime medication and admits he was using alcohol before his arrest.
5. That he was first charged with the murder of the deceased in the year 2007 vide Nakuru High Court HCCRC No. 25 of 2007 and was found guilty and sentenced to death. However, he appealed to the Court of Appeal at Nakuru and the trial declared a nullity and a retrial ordered.



6. Consequently, he was released on bond of Kshs. 500,000. However, while out on bond, he committed other offences and has been charged before various courts.
7. That he is remorseful, regrets his actions and takes full responsibility for the offence. That at the time of commission of the offence, he was driven by anger after his wife failed to open the door for him and then he kicked the door which broke and extremely injured the deceased.
8. That the accused's mother indicated that he has anger issues and lacks self-control. Further, he indulges in alcohol, disturbs the family, is a nuisance and security threat to the family. That, the offence is serious and he should be sentenced. Further, the accused's sister states that his safety in the community is not guaranteed.
9. That his family members are still in pain and are not ready and willing to accept him back and that the court should deal with him accordingly.
10. Furthermore, the deceased's mother, who is the accused's former wife, is still bitter and in pain as the death of her daughter affected her psychologically and emotionally. That she has not healed and is still traumatized. Further, the offence severed the relationship with the accused's family and forced her to remarry so as to forget the past experience. Furthermore, the other child has never come to terms with the murder of his elder sister and is traumatized. The she is not ready to forgive the accused and wants the court to mete out a punitive sentence for her to get closure.
11. The report indicates that the local administrator and the neighbours at Mutonyora village, stated that the accused is a security threat to the community. Further, his safety is not guaranteed as most people are bitter about the offence herein and the other offences that still pending before various courts and wants him punished by a punitive sentence.
12. Further, the investigating officer noted that the accused has anger issues aggravated by alcohol use and is a high-risk person in the society and that his safety is not guaranteed and therefore wants the accused punished harshly.
13. In conclusion the Probation officer, Carlos Ziro Pole, recommends the court issues a punitive sentence to serve as a lesson to other criminal minded individuals in society.
14. In addition, the defence filed submission on mitigation dated 17th February 2025 where the accused stated that he is deeply remorseful for his actions that led to the death of the deceased and accepts that he has anger issues which he should have controlled. That he pleads that the court metes out a lenient sentence. Further that he is willing to comply with any conditions the court may impose including mandatory counselling and/or any parental programs.
15. The prosecution in submissions dated 5th March 2025, cited clause 1.3 of the Sentencing Policy Guidelines (2023) that sets out the objectives of sentencing being; retribution, deterrence, rehabilitation, restorative justice, community protection, denunciation, reconciliation, and reintegration.
16. The prosecution further cited the case of; Francis Karioko Muruatetu & another v Republic [2017] eKLR where the Supreme Court of Kenya dealt with mitigating factors that the court should consider while sentencing an accused person for the offence of murder.
17. The prosecution also cited the case of, Agunga & a others vs Republic [2022] KECA 14 (KLR) (4th February 2022) (Judgment) where the Court of Appeal stated in sentencing judgment the court should not only consider the mitigating factors by the accused's counsel but also the gravity of the offence,



the brutality displayed, the traumatic effects, emotional distress and diminished source of livelihood for the victim's family.

18. The prosecution stated that while the accused is a first offender, he is a habitual offender facing other pending cases; HCCRC E011 of 2024 a murder charge before the High Court at Ol Kalou, CMCRC No S.O. E014 of 2024 before Engineer Law Courts, and a grievous harm case No. E378 of 2024 also before Engineer Law Courts, offences committed while on bond.
19. Further that the probation report is not favourable as it is noted that the accused has anger issues with no indication that he has changed. Furthermore, the victim's family was yet to come to terms with the death of the deceased.
20. It is the prosecution submissions that there are aggravating circumstances herein, that the cause of the death was a fracture on the head indicating an intent to kill, and lack of empathy showed by the failure of the accused to check on the deceased who was his daughter after being informed of her condition, which factors militate against meting out of a lenient sentence.
21. The prosecution submitted that the sentence to be imposed ought to be commensurate with the blameworthiness of the accused as held by the Court of Appeal in the case of; *Omuse vs Republic* [2009] KLR 214.
22. That it is in the interest of justice that the court should impose a custodial sentence that will allow the accused an opportunity to be rehabilitated and learn to manage his anger issues while in custody.
23. I have considered the afore the records of the accused noting that, he is a first offender and the views in the pre-sentence report alongside submissions by the respective parties.
24. In the same vein, I note that sentencing plays a central role in the administration of justice. In that regard, clause 4.6.1 of the Sentencing Guidelines (2023) provides inter alia that; the sentencing process forms part of the trial and is therefore subject to the fair hearing constitutional guarantees.
25. The Supreme Court of India in the case of, *Antony Pareira V State of Maharashtra* (2 AIR 2012 SC 3802) held that stated that

“70. 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”.

26. Similarly, the Supreme Court of Kenya in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR stated that: -

“(41) It is evident that the trial process does not stop at convicting the accused. There is no doubt in our minds that sentencing is a crucial component of a trial. It is during sentencing that the court hears submissions that impact on sentencing. This necessarily means that the principle of fair trial must be accorded to the sentencing stage too.



27. In addition, the Supreme Court of Kenya gave guidelines to consider as mitigating factors in re-sentencing offenders convicted of the offence of murder and by extension sentencing in other cases 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”.

28. Be that as it may, justification, function and objective of punishment in criminal law, has five major goals: retribution, deterrence, restoration, rehabilitation, and incapacitation.

29. In that recognition of these goals, clause 1.3 of the Sentencing Guidelines (2023), stipulates the objectives of sentencing as follows: -

- 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.
30. To revert back to the matter herein having considered the circumstances of the case herein where the accused brutally murdered his own child robbing her of her prime life and the fact that he is a habitual offender whom no one wants set free and calls for a deterrence sentence, the issue of mercy or non-custodial sentence does not arise
31. Consequently, taking into account the period in custody and/or sentence served, I sentence the accused to serve years thirty (30) years imprisonment from the date of this order.
32. Right of appeal 14 days explained

DATED, DELIVERED AND SIGNED THIS 26TH DAY OF MARCH 2025.

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms. Chepkonga for the State

Mr. Karanja for the accused

Accused present virtually

Ms. Hannah: court assistant

