



**Republic v Kariuki (Criminal Case 13 of 2017)
[2024] KEHC 582 (KLR) (30 January 2024) (Sentence)**

Neutral citation: [2024] KEHC 582 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 13 OF 2017
HM NYAGA, J
JANUARY 30, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

SAMUEL NDIRANGU KARIUKI ALIAS SAMMY ACCUSED

SENTENCE

1. The Accused Person, Samuel Ndirangu Kariuki alias SAMMY, was convicted of Murder contrary to section 203 as read with section 204 of the [Penal Code](#). He was found guilty of unlawfully killing Pauline Wangare Githu (Deceased) on 31st January 2017 at Kikapu Village in Njoro Sub-County within Nakuru County.
2. My duty at this stage is to determine the appropriate sentence for the accused person.
3. The Supreme Court in [Francis Karioko Muruatetu & Another v Republic](#), Petition No. 15 of 2015, as a guide in sentencing held that:

“...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.”

4. The Supreme Court in *Muruatetu Case* (supra) appreciated that:

“In Kenya, many courts have highlighted the principles of sentencing. One such case is the High Court criminal appeal decision in *Dahir Hussein v Republic* Criminal Appeal No. 1 of 2015; [2015] eKLR, where the High Court held that the objectives include: “deterrence, rehabilitation, accountability for one’s actions, society protection, retribution and denouncing the conduct by the offender on the harm done to the victim.” The 2016 Judiciary of Kenya Sentencing Policy Guidelines lists the objectives of sentencing at page 15, paragraph 4.1 as follows:

“Sentences are imposed to meet the following objectives:

1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.
5. Community protection: To protect the community by incapacitating the offender.
6. Denunciation: To communicate the community’s condemnation of the criminal conduct.”

5. The Supreme Court in *Muruatetu’s case*(supra) held, inter alia, as follows:

“Indeed, the right to fair trial is not just a fundamental right. It is one of the inalienable rights enshrined in article 10 of the Universal Declaration of Human Rights, and in the same vein article 25(c) of the [Constitution](#) elevates it to a non-derogable right which cannot be limited or taken away from a litigant. The right to fair trial is one of the cornerstones of a just and democratic society, without which the rule of Law and public faith in the justice system would inevitably collapse.

Section 204 of the [Penal Code](#) deprives the court of the use of judicial discretion in a matter of life and death. Such law can only be regarded as harsh, unjust and unfair. The mandatory nature deprives the courts of their legitimate jurisdiction to exercise discretion not to impose the death sentence in appropriate cases. Where a court listens to mitigating circumstances but has, nonetheless, to impose a set sentence, the sentence imposed fails to conform to the



tenets of fair trial that accrue to accused persons under articles 25 of *the Constitution*; an absolute right.

With regard to murder convicts, mitigation is an important facet of fair trial. In Woodson as cited above, the Supreme Court in striking down the mandatory death penalty for murder decried the failure to individualize an appropriate sentence to the relevant aspects of the character and record of each defendant, and consider appropriate mitigating factors. The court was of the view that a mandatory sentence treated the offenders as a faceless, undifferentiated mass to be subjected to the blind infliction of the penalty of death thereby dehumanizing them.

We consider Reyes and Woodson persuasive on the necessity of mitigation before imposing a death sentence for murder. We will add another perspective. Article 28 of *the Constitution* provides that every person has inherent dignity and the right to have that dignity protected. It is for this court to ensure that all persons enjoy the rights to dignity. Failing to allow a Judge discretion to take into consideration the convicts' mitigating circumstances, the diverse character of the convicts, and the circumstances of the crime, but instead subjecting them to the same (mandatory) sentence thereby treating them as an undifferentiated mass, violates their right to dignity.

If a Judge does not have discretion to take into account mitigating circumstances it is possible to overlook some personal history and the circumstances of the offender which may make the sentence wholly disproportionate to the accused's criminal culpability. Further, imposing the death penalty on all individuals convicted of murder, despite the fact that the crime of murder can be committed with varying degrees of gravity and culpability fails to reflect the exceptional nature of the death penalty as a form of punishment. Consequently, failure to individualise the circumstances of an offence or offender may result in the undesirable effect of 'overpunishing' the convict."

6. The discretion in sentencing rests with the trial judge because he or she has the knowledge of the relevant facts before him or her and in many instances, has observed the accused and witnesses' demeanour. The discretion must however be exercised judiciously. In the persuasive Nigerian case of *African Continents Bank v Nuamani* [1991] NWLI (part 86)486, it was observed that,

"The exercise of court's discretion is said to be judicial if the judge invokes the power in his capacity as a judge qua law. An exercise of discretionary power will be said to be judicial, if the power is exercised in accordance with the enabling statutes, discretionary power is said to be judicious if it arises or conveys the intellectual wisdom or prudent intellectual capacity of the judge. The exercise must be based on a sound and sensible judgment with a view to doing justice to the parties."

7. It is well settled law that a sentence must reflect the accused's blameworthiness for the offence. See *Omuse v R* (2009) KLR 214, where it was held that the sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that the proper exercise of discretion in sentencing requires the Court to consider that fact and circumstances of the case in their entirety before settling for any given sentence.
8. In terms of Section 203 as read with Section 204 of the *Penal Code*, the accused upon being convicted is liable to be sentenced to death. However, as has been stated in Muruatetu's case above, this represents the maximum sentence and the court may if the circumstances so dictate, impose a lesser sentence.



It has now been settled that though the death sentence itself is not unconstitutional, it ought to be reserved for the most aggravated cases.

9. In sentencing the accused, I am enjoined to consider all the mitigating and aggravating circumstances in this matter so as to determine an appropriate sentence.
10. The mother of the deceased gave a victim impact statement, saying that the deceased left behind three children and that she used to assist her. She stated that she was still in pain over her loss and she was not ready to forgive the accused. This position is contrary to what is reflected in the presentence report filed on 1st November, 2023.
11. The prosecution counsel told the court that in light of the deceased's mother's sentiments, a deterrent sentence should be meted out.
12. The Counsel for the accused in mitigation submitted that the accused is remorseful and that he loved the deceased as he assisted her by calling for a motor cycle to carry her home. He submitted that the court should consider the accused never used any weapon. He prayed for non-custodial sentence.
13. Having considered the circumstances of the case, the submissions by the State Counsel, the mitigation by the defence counsel and the presentence report I will proceed to consider both the aggravating circumstances if any, and the mitigating circumstances.
14. With regards to the aggravating factors, I have considered the deceased died as a result of severe brain injury attended by massive subdural hematoma due to multiple blunt force trauma in keeping with fatal assault in a body with gravid uterus. This is an aggravating factor since it was reasonably expected for the accused to have known that his acts were likely to kill or cause grievous harm to the deceased.
15. I have also considered the sentiments of the deceased's mother stated above and her sense of justice as aggravating factors.
16. I find the mitigating factors present in this case are; the accused is a first time offender, he is said to have expressed remorse although the victim's family is yet to forgive him. For the period he has been out on bond he conducted himself well and had no problem with anyone.
17. I have considered the following cases in sentencing the accused: -
 - a) *Republic v Joseph Otieno Owino* [2020] eKLR, where the accused was sentenced to twenty (20) years imprisonment for killing his wife.
 - b) *Republic v Samson Kalamai Lebene* KBT HCCR Case No. 2 of 2017 where the court sentenced a husband who killed his wife following a domestic quarrel to imprisonment for five (5) years to meet the justice of the case, rehabilitation and deterrence of the accused and assuagement of the deceased's family.
 - c) *Republic v Johana Munya Mweni* [2018] eKLR where the victim was subjected to domestic violence by the offender as a result of their union lacking a child was sentenced to serve 35 years' imprisonment.
18. Having noted the family's views and having considered all the mitigating circumstances and recommendation by the Probation Officer, I find custodial sentence is appropriate. The accused needs to feel the consequences of the crime he committed. This was a premeditated attack on the victim. The accused ought to have controlled himself, whatever issues he had with the deceased notwithstanding.
19. In my opinion, a custodial sentence will rehabilitate him and send a warning to others that violence do not pay at all.



20. Accordingly, I sentence the Accused Person to 10 years' imprisonment.
21. Since the accused has been out on bond the sentence will commence from 27th July 2023, the date the court remanded him upon conviction.
22. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 30TH DAY OF JANUARY, 2024.

H. M. NYAGA,

JUDGE.

In the presence of;

C/A Kipsugut

State counsel Wanjiku

Accused present

Mr. Njogu for accused

