



**Republic v Khachupa (Criminal Case E008 of 2021)  
[2024] KEHC 581 (KLR) (30 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 581 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE E008 OF 2021  
HM NYAGA, J  
JANUARY 30, 2024**

**BETWEEN**

**REPUBLIC ..... COMPLAINANT**

**AND**

**ALEXANDER MUHALIA KHACHUPA ..... ACCUSED**

**RULING**

1. The Accused was charged with Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars were that on 30<sup>th</sup> January, 2021 at around 8:30 p.m. at Posta Area, Nakuru West Sub-County within Nakuru County he murdered Ronny Malik.
2. On 29<sup>th</sup> June, 2021, the charge was read to the accused and he pleaded not guilty.
3. Subsequently the parties entered into a plea bargaining agreement pursuant to the provisions of Section 137A to 137E of the [Criminal Procedure Code](#) (CPC), duly signed on 19<sup>th</sup> September, 2023.
4. The court examined the accused in accordance with Section 137F of the [Criminal Procedure Code](#) and established that the plea bargain was unequivocal and was entered into voluntarily, as provided for under section 137G. It then accepted the plea agreement.
5. Thereafter the charge was reduced to Manslaughter, contrary to section 202 as read with section 205 of the [Penal Code](#). The elements of the charge were then read out to the accused who pleaded guilty and subsequently admitted the facts as set out in the plea bargain agreement. He was then convicted on his own plea of guilty. The post mortem report was produced as Exhibit No.1.
6. In her sentencing submissions, the State Counsel recommended that he be sentenced to 10 years' imprisonment. She did not advance any reasons for her recommendation.
7. The defence counsel, Mr. Kairu Maina, in his submissions and mitigation, pleaded for leniency and stated that the accused is a young man aged 41 years old and married with four children. He stated that



the accused person's children were abandoned by their mother upon the accused's arrest and currently they are under the care of the accused aged mother in Kakamega.

8. He submitted that the accused is a first time offender and he regrets his actions. He submitted that the period within which the accused has been in custody has rehabilitated his character and he now appreciates that the offence was grievous and upon release, he promises to maintain peace and order.
9. He proposed that a three-year non-custodial sentence will suffice. In buttressing his submissions, he referred this court to the cases of *Republic v Collet Thabitha Wafula* [2016] eKLR & *Francis Karioko Muruatetu & another v Republic* [2017] eKLR.
10. A Pre-sentence report of the accused person was filed on 26<sup>th</sup> October, 2023. According to the report, the accused was born in 1981 and he schooled up to class 6 then dropped out. He was married with 4 children who upon his arrest was abandoned by their mother and are currently under the care of their grandmother in Kakamega. The accused person's first born child is in form three and his school fees is being paid by the school bursary fund with the assistance of the area chief while the second born is out of school. The whereabouts of the other children were not disclosed.
11. It is said that the accused and the victim were neighbors and they differed over a flash disk which the accused claimed to own. The environment in which the crime was committed is prone to the consumption of illicit brews. The accused, it is stated in the report, regrets his action and is concerned with the welfare of his children who are under the care of his aged mother. He pleads for leniency. The victim's family, according to the same report, have forgiven the accused and have no issue if he is granted a non-custodial sentence.
12. The Probation Officer recommends non-custodial sentence of three (3) years.

### **Analysis & Determination**

13. The only issue for determination is what would constitute an adequate, appropriate and just sentence in the circumstances of this case?
14. 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.”



15. 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.”

16. I have considered the circumstances of the case, the submissions by the State Counsel and the mitigation by the defence counsel. It is at this stage that I will briefly look at the circumstances of the case.

17. According to the facts presented by the Prosecution, on 30<sup>th</sup> January, 2021 Maryan Tesha was in her home. She went to the toilet and saw the accused with another person leave his house and went to the house of the deceased. A struggle ensued between the two men and the deceased. The accused took a knife and stabbed the deceased. The 2 men then fled the scene. Maryan raised an alarm and neighbors came to the scene. They took the deceased to Mother Kevin Hospital where he was referred to PGH Nakuru. The deceased passed away while undergoing treatment/x-ray. The body was preserved and subsequently a post mortem report was conducted by Dr. Ngulungu who established the cause of death to be massive loss of blood from a stab wound. Investigations conducted established that the deceased and the accused had argued over a flash disk. The accused was traced and arrested.

18. In terms of Section 202 as read with section 205 of the *Penal Code*, the accused upon being convicted is liable to serve life imprisonment. However, this represents the maximum sentence which is usually reserved for the most aggravated of such cases.



19. 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.”
20. The mitigating factors that I have taken into consideration are, first, that the accused is remorseful and he readily pleaded guilty and thus saved the court on judicial time. Secondly, the accused is a first offender and lastly he is a father of four children who need his care and attention.
21. 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.
22. In this case, there is no evidence that the deceased instigated a fight. According to the facts that were read by the prosecution and which the accused admitted to be true, the accused in company of another person went to the deceased’s house and attacked the deceased, then ran away. The deceased was not armed and as such the accused was not in any imminent danger of attack from the deceased. It was therefore unnecessary for him to use excessive force against the deceased that led to his death. The accused knew or ought to have reasonably known that in using the knife, he was likely to kill or cause grievous harm to the deceased. His actions were indeed unlawful.
23. According to presentence report the accused has four children who are in dire need of his care as they were abandoned by their mother upon his arrest and are currently under the custody of his mother. The accused has expressed remorse and victims’ family have forgiven him and have no issue if he is released on a non-custodial sentence. The probation officer also recommends a non-custodial sentence of three years.
24. Having noted the circumstances of the case, all the mitigating circumstances, the recommendation by the Probation Officer and the period accused has spent in remand custody, I am not convinced that a non-custodial sentence is the appropriate sentence.
25. Even though the defence asked me to consider the plight of the accused’s young children and the fact that the home environment is conducive and receptive to the accused’s return, it cannot be overlooked that the accused and his accomplice brutally attacked the deceased. This was not an innocuous act that resulted in an unexpected death. It was a stab straight to the chest. The consequences were clear to the accused. A life was needlessly lost.
26. Consequently, I hereby sentence the accused to seven (7) years imprisonment.
27. The said sentence will commence from 29<sup>th</sup> June 2021, when the accused was first remanded in lawful custody.
28. Orders accordingly.



**DATED, SIGNED AND DELIVERED AT NAKURU THIS 30<sup>TH</sup> DAY OF JANUARY, 2024.**

**H. M. NYAGA,**

**JUDGE.**

**In the presence of;**

C/A Kipsugut

State counsel Wanjiku

Accused present

Ms Chetalam for Kairu

Maina for accused

