



**Republic v Bundi (Criminal Case 16 of 2015)
[2024] KEHC 370 (KLR) (25 January 2024) (Sentence)**

Neutral citation: [2024] KEHC 370 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 16 OF 2015
HM NYAGA, J
JANUARY 25, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

EDWIN OSIRI BUNDI ACCUSED

SENTENCE

1. The accused person, Edwin Osiri Bundi, was convicted of manslaughter contrary to section 202 as read with section 205 of the *penal Code*. He was found guilty of the unlawfully killing Josphat Mungele (Deceased) on March 7, 2015 at Kaptembwo Estate in Nakuru Township within Nakuru County.
2. The conviction came after a full trial in which the accused person had been charged with murder which he denied. I ultimately found that the ingredient of malice afore-thought had not been proved to warrant a murder conviction but convicted the accused person of the lesser offence of manslaughter.
3. My duty herein is to determine the appropriate sentence for the accused person.
4. The father of the deceased gave a victim impact statement, saying that the deceased died unmarried at the age of 35 and that it pained him to have lost him. He said the deceased used to assist him and he was not ready to forgive the accused who had never sought for forgiveness after committing the offence. He was bitter and this is also reflected in the Presentence Report filed in court on December 6, 2023 by Salim A.G, the Probation Officer.
5. The prosecution counsel told court that in light of the deceased's father sentiments, it is clear the family is yet to heal from the loss and she proposed that the accused be sentenced to 30 years' life imprisonment.
6. The Counsel for the accused in mitigation submitted that the accused is remorseful and he has learnt his lesson a hard way. He urged the court to consider the period the accused has been in custody.



7. The Supreme Court in *Francis Karioko Muruatetu & Another vs 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.”

8. 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.”
9. 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.
10. In recent times, an indefinite life imprisonment sentence has been declared unconstitutional. The Court of Appeal in Criminal Appeal No. 22 Of 2018 *Evans Nyamari Ayako v Republic* held as follows with regard to life imprisonment sentence: -

“...The only concern we have is whether an indefinite life imprisonment sentence is constitutional and can be justified given the emerging norms of human decency and human rights reflected in our emerging jurisprudence. This emerging jurisprudence is a product of a purposive reading of Articles 27 and 28 of our Constitution as applied to sentencing. In interpreting these provisions, this Court, in the Julius Kitsao Manyeso Case (supra) stated as follows:

“...we are of the view that the reasoning in *Francis Karioko Muruatetu & Another v Republic* [2017 eKLR] equally applies to the imposition of a mandatory indeterminate life sentence, namely that such a sentence denies a convict facing life imprisonment the opportunity to be heard in mitigation when those facing lesser sentences are allowed to be heard in mitigation. This is an unjustifiable discrimination, unfair and repugnant to the principle of equality before the law under article 27 of the *Constitution*. In addition, an indeterminate life sentence is in our view also inhumane treatment and violates the right to dignity under article 28, and we are in this respect persuaded by the reasoning of the European Court of Human Rights in *Vinter & Others v The United Kingdom* (Application nos. 66069/09, 130/10 and 3896/10) 120161 Ill ECHR 317 (9 July 2013) that an indeterminate life sentence without any prospect of release or a possibility of review is degrading and inhuman punishment, and that it is now a principle in international law that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved.”

On our part, we are in agreement that an indeterminate life sentence falls afoul the provisions of articles 27 and 28 of our Constitution purposively interpreted. We also find that there is an emerging consensus that the evolving standards of human decency and human rights to which Kenya has agreed to adhere to by virtue of Articles 2(5) and 2(6) of the *Constitution* that indeterminate life imprisonment is a cruel and degrading punishment which violates our constitutional values. Our conclusion is based on the consistent trend in many states towards abolition of life imprisonment or its re-definition to a term sentence.”

11. 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.”

12. 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.
13. I am enjoined to consider all the mitigating and aggravating circumstances in this matter so as to determine an appropriate sentence.
14. 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.
15. With regards to the aggravating factors, I treat the sentiments of the deceased’s father stated above and his 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 has expressed remorse although he has not approached the victim’s family and he has been in custody for about 9 years now.
17. I have also considered the fact that the Accused Person hit the deceased on the head severally using a piece of wood. Indeed, the pathologist confirmed that the injuries to the deceased head were as a result of multiple trauma. 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.
18. Having noted the family’s views and having considered all the mitigating circumstances, I am of the view that a custodial sentence is appropriate.
19. Accordingly, I sentence the accused person to 10 years’ imprisonment.
20. Under section 333(2) of the [Criminal Procedure Code](#) (CPC) the sentence shall be computed to commence on March 11, 2015, when the Accused Person was taken into remand custody.
21. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 25TH DAY OF JANUARY, 2024.

**H. M. NYAGA,
JUDGE.**

In the presence of;
Wanjiku for state
Accused present

