



**Republic v Njoroge (Criminal Case 31 of 2023)
[2024] KEHC 2865 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2865 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE 31 OF 2023**

**RB NGETICH, J
MARCH 20, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

JOSHUA KARANJA NJOROGE ACCUSED

RULING

1. The accused was charged with the offence of murder contrary to Section 204 as read with section 205 of the *Penal Code*. The particulars of the charge being that on the 3rd December, 2014 at Kiremo Village Timboroa Location, Koibatek Sub- County in Baringo County, the accused murdered Tumaini Kwamboka Rebeka.
2. By a judgement delivered on the 25th day of January, 2024, the accused was found guilty of the offence of murder contrary to section 203 as read with Section 204 of the Penal Code and convicted him accordingly. Before mitigation, this court called for presentence report to assist in considering sentence to impose.

Mitigation

3. The accused mitigated through his Advocate Mr. Wanjir. He submitted that the accused is a first offender with no previous criminal records, he is remorseful and he is still a young man who had ambitions of becoming a teacher and had applied to Tambach Teachers College with a view of gaining knowledge so as to contribute to the society. Counsel submitted that the accused has been in custody since the year 2014 and during this period, he has undergone various rehabilitation programs and has also undergone mental health counselling under banner “crime si poa” which was a very intensive course and helpful. Topics covered in the program include anger management and therapy, relationships, substance abuse, peer pressure, negotiation and communication skills among others.



4. Counsel further submitted that the accused has also undertaken theological courses which has contributed to his spiritual growth and prayed that he be granted an opportunity to go out of prison so that he can be able to preach to other young people on the need to fear God and do good and this will also grant him opportunity to re-integrate within the community. That it is also important for court to note that while in prison, the accused was diagnosed with peptic ulcers and has not been managed properly while in prison.
5. Counsel further submitted that the accused promises to be a law-abiding citizen and act in a reasonable manner and in view of the circumstances, he prayed that both combined custodial and non-custodial sentence will suffice. For custodial, they pray that it be substituted with the period already served and the remaining period be non-custodial in view of the social inquiry report that community is not receptive of the accused. They submit that the accused is ready to move and proceed with his life far away from the area because he is now a changed man. He submitted that for the ends of justice and as set in sentence guidelines, he urged this court to impose a non-custodial sentence and cited the case of Rep Vs Samson Kalamai Hccr No. 21 of 2017(UR) where the accused who was husband to the victim was sentenced to serve 5 years imprisonment.
6. Ms. Ratemo representing the state submitted that she had a chance to peruse the pre-sentence report and it has clearly indicated the views of the local administration and therefore the prayer for the accused to be re-integrated back to the society seem untenable since re-integration requires supervision by probation officer with assistance of the local administration and secondly, the victim was a young person who was yet to go through learning in higher education; that she had a bright future but her life was cut short by the actions of the accused. That it is also worth noting that the accused has not made attempts to approach family of the victim to show remorse; despite the fact that the loss occurred 10 years ago, the family of the victim are yet to come to terms with the loss. She submits that the deceased also died of multiple stab wounds and cited the case of Jonathan Lemiso Olekeni Vs. Republic [2018] eKLR and John Ndede Ochodo Alias Obago Vs Republic where the court of appeal found sentence of 30 years imprisonment to be suitable where the deceased was insulted several times leading to his death.
7. She further submitted that in this case, the victim suffered several stab wounds and the fact that the accused has not shown remorse and no certificate of training has been submitted by counsel neither has recommendation by the prison presented, she prayed for sentence of 30 years imprisonment. She did not object to the term spent in custody being computed in the sentence.

Determination

8. Under section 204 of the Penal Code, a person convicted of murder shall be sentenced to death. The mandatory nature of the death penalty however in the case *FRANCIS MURUATETU & ANOTHER v REPUBLIC* [2017] eKLR the Supreme Court of Kenya while retaining the death sentence found that its mandatory nature was unconstitutional and for the purposes of this sentence had this to say:-

“45. To our minds what Section 204 of the Penal Code is essentially saying to a convict is that he or she cannot be heard on why in all the circumstances of his/her case. The death sentence should not be imposed on him or her, or that even if he or she is heard, it is only for the purposes of the record as at that time of mitigation because the court has to impose the death sentence nonetheless, as illustrated by the foregoing Court of Appeal decision. Try as we might we cannot decipher the possible rationale for this provision. We think that a person facing the death sentence is most deserving to be heard in mitigation because of the finality of the sentence.



46. We are of the view that mitigation is an important congruent element of fair trial. The fact that mitigation is not expressly mentioned as a right in *the constitution* does not deprive it of the necessity and essence in the fair trial process. In any case, the right pertaining to fair trial of an accused pursuant to Article 50 (2) of *the Constitution* are not exhaustive.”

The court therefore proceeded to pronounce itself thus:

“ 58. We now lay to rest the quagmire that has plagued the court with regard to the mandatory nature of Section 204 of the Penal Code. We do this by determining that any court dealing with the offence of murder is allowed to exercise judicial discretion by considering any mitigating factors in sentencing an accused person charged with and found guilty of that offence. To do otherwise will render a trial, with the resulting sentence under Section 204 of the Penal Code unfair thereby conflicting with article 25(c), 28, 48 and 50(1) and (2) (g) of *the Constitution*.

9. I have considered the circumstances leading to the commission of the offence herein. I take note of the pain the deceased was subjected to before she died; she suffered several stab wounds. The accused herein subjected the deceased to inhuman treatment which in turn affected their loved ones who are yet to heal from the loss. There is no indication that the accused has made any effort to offer apology to the deceased’s family which may explain the reason why they are still in pain and yet to recover from the loss. The incident occurred 10 years ago and, in my view, the accused has had enough time to reflect on his actions and seek forgiven from the victim’s family but has failed to do so. I have also taken into consideration views by people interviewed by the probation officer and the initiatives taken in prison to rehabilitate the accused as captured in presentence report. In view of the above, I find it appropriate to impose custodial sentence and take into consideration the period served by accused in remand. I am therefore inclined to impose 25 years imprisonment. The period served in remand to be computed in sentence.

10. Final Orders: -

1. Accused sentenced to 25 years imprisonment.
2. Period served by accused in remand to be considered from sentence.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 20TH DAY OF MARCH 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

Court Assistant, Mr Karanja.

Accused persons present.

Counsel for the state Ms Ratemo.

Defence counsel Mr.Wanjir.

