



**Macharia v Republic (Miscellaneous Criminal Application 243 of 2019)
[2024] KEHC 4568 (KLR) (Crim) (30 April 2024) (Resentence)**

Neutral citation: [2024] KEHC 4568 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION 243 OF 2019**

LN MUTENDE, J

APRIL 30, 2024

BETWEEN

PAUL MWANGI MACHARIA APPLICANT

AND

REPUBLIC RESPONDENT

RESENTENCE

1. Paul Mwangi Macharia, the applicant, was charged with Murder contrary to Section 203 of the Penal Code, convicted and sentenced to suffer death under Section 204 of the stated Statute by Lagat Korir J on 6/10/2015, having killed Kimani Wairire (Deceased).
2. This court has been moved by the applicant with a view of being resented and particularly he seeks a lenient sentence considering that he has been incarcerated all along.
3. The facts of the case were that the applicant visited the home of Joyce Ruiru, the deceased wife intending to buy eggs. He was escorted to
4. the chicken pen where he hurled insults and suddenly attacked the deceased with a knife which he pulled out from his jacket. The deceased had rushed to his wife’s rescue when the applicant turned to him and stabbed him severally and he succumbed to the fatal injuries. The applicant later surrendered himself to the police who effected arrest.
5. In mitigation it was submitted that the applicant was a first offender and a young man in the prime of his youth. His mother and siblings depended on him and he also had a leg deformity.
6. The application is premised on grounds that the applicant was 22 years during the unlawful act and was unable to contemplate the consequences of his action, he did not have requisite motive to commit the offence; and, that he was a first offender.



7. In mitigation the applicant urges that he has reformed following training and certifications achieved during his period of incarceration. That he
also trained in psychology, mindful leadership, substance abuse and has also attended bible programs, has learnt to handle pressures in life and that his release will not pose insecurity to the society.
8. The applicant further urges that he has spent 10 years in custody and that the court considers this period as sufficient and /or the court to consider an alternative of a non-custodial sentence. He cited other cases where the court acquitted applicants who had served such period being the case of *Lawrence Nkonge – Mwaindi v Republic*(2018)eKLR where the court was satisfied that the applicant had demonstrated his rehabilitation having 8 certificates of theology trade tests, *Rasesh Chhotalal Shah v Republic*, Misc Criminal Application No. 337 of 2013, where the applicant served 20 years from date of custody.
9. The State/respondent did not oppose the application for resentencing but urged that the period served, aggravating factors and the impact on the victim’s family should be considered. The prosecution contends that the murder was gruesome as the deceased suffered multiple deadly cuts, and, the wife of the deceased was also injured hence a deterrent sentence ought to be considered.
10. The presentence report filed reveals that the applicant was under the influence of bhang and that the deceased wife had insulted his mother therefore the actions were intended to revenge.
11. The applicant family supports his release on a non custodial sentence and his brother has promised to accommodate him at Githurai 45.
12. The secondary victim views represented by the wife of the deceased relocated from the place of the offence to Ruai are that although she had forgiven the applicant she opposes the release. The community views were represented by the chief of Kiganjo area, who said that the community was shocked by the actions of the applicant who did not have issues with people and he also had a cordial relationship with the deceased.
13. I have considered the application and response thereto and authorities cited. The decision of the Supreme Court in the case *Francis Karioko Muruatetu v Republic* 2017(eKLR) declared the death sentence unconstitutional and a violation of an accused person’s right to fair trial to the extent that he could not be heard on his mitigation.
14. In *Francis Karioko Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae)* (2021) eKLR, The Supreme Court stated as follows:
 - “(18) Having considered all the foregoing, to obviate further delay and avoid confusion, we now issue these guidelines to assist the Courts below us as follows:
 - i. The decision of Muruatetu and these guidelines apply only in respect to sentences of murder under Sections 203 and 204 of the Penal Code;
 - ii.
 - iii. All offenders who have been subject to the mandatory death penalty and desire to be heard on sentence will be entitled to re-sentencing hearing.



- vi. An application for re-sentencing arising from a trial before the High Court can only be entertained by the High Court, which has jurisdiction to do so and not the subordinate court.
 - vii. In re-hearing sentence for the charge of murder, both aggravating and mitigating factors such as the following, will guide the court;
 - (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) The manner in which the offence was committed on the victim;
 - (g)
 - (h) Remorsefulness of the offender;
 - (i) The possibility of reform and social re-adaptation of the offender;
 - (j) Any other factor that the Court considers relevant.
 - viii. Where the appellant has lodged an appeal against sentence alone, the appellate court will proceed to receive submissions on re-sentencing...”
14. A social evaluation report was filed by the Probation Department. The family of the applicant pleaded for review of the sentence, but, the victim’s family is opposed to the release.
15. Relevant authorities cited include the case of *Rajesh Chhotallah Shah v Republic* [2019] eKLR where the accused was charged and convicted of murder of his step father and mother; he admitted the offence in his mitigation and was found to be remorseful. Lessit J (as she then was) resented him to 20 years imprisonment. The accused had served 10 years 9 months.
16. In the case of *Omuse v R* (2009) KLR 214, the court held that sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and 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.
17. It is also important to point out that in exercising discretion in sentencing, the court must also have in mind the objectives of sentencing as laid down in the Sentencing Policy Guidelines, 2016 published by the Kenya Judiciary and which includes: -
- i. Retribution: To punish the offender for his/her criminal conduct in a just manner.
 - ii. Deterrence: To deter the offender from committing a similar offence subsequently as well as discourage other people from committing similar offences.



- iii. Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.
 - iv. Restorative justice: To address the needs arising from criminal conduct such as loss and damages.
 - v. Community protection: To protect the community by incapacitating the offender.
 - vi. Denunciation: To communicate the community's condemnation of the criminal conduct.
18. This is a case where the applicant was a young adult aged 23 years at the time of the act. He was a first offender, who may have been under the influence of drugs then, but, he did not raise the defence of intoxication and therefore that argument does not assist him at this stage.
19. The applicant attacked an innocent old lady, he was unprovoked and did not act in self defence. The applicant had intention to inflict grievous harm by the way he attacked the deceased several times. Multiple cuts were noted on the head and brain matter was exposed. The applicant was also armed and he injured the second victim who became a widow.
20. In similar cases courts have meted out sentences between 18- 30 years.
In the case of *Ruth Wanjiku Kamande v Republic* [2020] eKLR where the accused stabbed the deceased with a knife multiple times. The pathologist testified that he succumbed to a total of 25 stab wounds to the deceased's chest, hands, legs, head, abdomen, back and shoulders. The Court of Appeal affirmed the death sentence meted out during trial further holding that the mitigating factors had been considered by the trial judge in line with Muruatetu case.
21. In the case of *Republic v Josephat Mukundi Kanono* [2017] eKLR, the High court at .. meted out the death sentence in August 2017 .The court held that the accused judgement was neither impaired as a result of consumption of alcohol or caused any mental infirmity to influence him to commit the crime. The accused went for the knife and walked up to the deceased only to stab her severally in the back with penetrating wounds to the chest.
22. In the case of *Waweru v Republic* [2023] KECA 622 (KLR), the appellant and the deceased argued over alcoholic and the deceased was telling the appellant that he had no money to purchase alcohol. An altercation ensued and the accused was seen drawing a kitchen knife from the right side of his waist and stab the deceased on the left side of the abdomen and left shoulder. The court interfered with the death sentence and sentence the accused to 30 years imprisonment from the date of arrest. The decision was given in May 2023.
23. The judiciary sentencing policy guidelines provide at paragraph 7 that :-
- 1. 7.19 In deciding whether to impose a custodial or a noncustodial sentence, the following factors should be taken into account:

Gravity of the offence: In the absence of aggravating circumstances or any other circumstance that render a non-custodial sentence unsuitable, a sentence of imprisonment should be avoided in respect to misdemeanors.
24. As stated the trial judge considered the factors of the case and ruled that



a deterrent sentence was most applicable . Further the gravity of the offence and the aggravating circumstances do not call for a non-custodial sentence. The applicant has urged that he has undergone training and acquired skills that would help him reintegrate in the society and live a crime free life though there is no record to prove this. The 10-year period served, the applicant youthful age when he was incarcerated and further averment of his rehabilitation from substance abuse and having undergone counselling should be interrogated in his favour.

25. In the result, taking into consideration circumstances in which the offence was committed, I set aside the sentence meted out which I substitute with a definite prison term of 22 years imprisonment, to be effective from the date of arraignment. (12.11.2011).

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY
THROUGH MICROSOFT TEAMS AT NAIROBI,
THIS 30TH DAY OF APRIL, 2024.**

L. N. MUTENDE

JUDGE

In The Presence Of:

Applicant

Ms. Ogweni holding brief for Mr. Mutuma for ODPP

Court Assistants – Habiba/ Fatuma/Hadija

