



**Republic v Mutiria (Criminal Case 19 of 2019)
[2024] KEHC 6554 (KLR) (30 May 2024) (Sentence)**

Neutral citation: [2024] KEHC 6554 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL CASE 19 OF 2019**

**LW GITARI, J
MAY 30, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ERIC MUTUGI MUTIRIA ACCUSED

SENTENCE

1. The accused was convicted of the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. The court called for a pre-sentence report and the same was filed in court on 17/5/2024. Learned Counsel for the accused for Mr. Kiri Muturi addressed the court in mitigation on behalf of the accused and submitted that the accused is remorseful and regrets the circumstances under which he finds himself in court. That he is a young man of 28 years of age and is from a vulnerable background. He is a first offender and pleads with the court for mercy. That he prays for a none custodial sentence.
3. On pre-sentence report the Counsel submits that the background of the accused is one where his family never took care of him. That accused lacks the capacity to understand the circumstances that he finds himself in and needs help. That this may not be achieved long incarceration. While referring this court a book by Richard Wright titled 'Native Son', which talks of circumstances and Environment that contributes to a person committing crime, he urges the court to treat the accused in the same manner and give an option of a none custodial sentence.
4. On the other hand the State submitted that the victim is a lady who lost her husband who was the sole bread winner for her and their two children. They were all deprived of their livelihood. That he is not remorseful as stated in the pre-sentence report. That he was not of good conduct and the family will not be satisfied and the none custodial sentence will lead to others taking the offence seriously. He urged the court to pass a sentence that will discourage the offence.



5. Retribution- To punish the offender for his/her criminal conduct in just manner.
 1. Deterrence: To deter the offender from committing a similar offence.
 2. Rehabilitation: To enable the offender to reform his criminal disposition and become a law abiding person.
 3. Restorative Justice: To address the needs arising from the criminal conduct such as loss and damages. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
 4. Community Protection: To protect the community by incapacitating the offender.
 5. Denunciation: To communicate the community's condemnation of the criminal conduct. Section 216 of the *Criminal Procedure Code*, (Cap 75 Laws of Kenya) provides:

The court may before passing sentence or making an order against an accused person under Section 215 receive such evidence as it thinks fit in order to inform itself as to the sentence or order properly to be passed or made.”

6. The Supreme Court of Kenya in the case of *Francis Karioko Muruatetu & Another v Republic*, Petition No.15/2015 while considering Section 329 of the *Criminal Procedure Code* gave the following guidance.

The court may before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed. It is without a doubt that the court ought to take into account evidence, the nature of the offence and the circumstances of the case in order to arrive at the appropriate sentence.”

7. In this case, pre-sentence reports were presented in court by Lydia Boore the Probation Officer Chuka. She notes that the accused is 28 years old. He has been convicted for a serious offence. He feels unfairly judged. He is not remorseful.
8. I find that the accused needs to be committed to prison so that he can understand the seriousness of his irresponsible conduct. Further, in view of the accused's background as stated by the Probation Officer, a custodial sentence is called for to take the accused through a process of rehabilitation as he missed parental guidance and care which has contributed to the don't care attitude. It is also necessary for the accused to reform and become a law abiding citizen.
9. The deceased was a family man who died at the prime of his age. He did not deserve to die. The accused executed the deceased in a most brutal manner. With one single stab would he was able to end the life of the deceased who was peacefully and lawfully enjoying his drink. The community are very much aware of the circumstances of this case. They need to be protected from the likes of the accused. A deterrent sentence is called for to communicate the community's condemnation of the others and to discourage the offence which is no doubt prevalent in this County.
10. The offence is serious and is punishable by death to reflect the intention of Parliament that those who kill should suffer the same fate. I will in this matter exercise discretion and pass a custodial sentence. I sentence the accused to serve thirty years imprisonment.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 30TH DAY OF MAY 2024.

L.W. GITARI
JUDGE



The ruling has been read out in open court.

L.W. GITARI

JUDGE

30/5/2024

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