

KENYA / JUDGMENT

Republic v Edward Muriuki Nyaga [2017] KEHC 9661 (KLR)

[2017] KEHC 9661 (KLR)

COURT

High Court

BEFORE

J Wakiaga

CASE / FILE NUMBER

Criminal Case 109 of 2009

Source: new.kenyalaw.org · Research copy typeset by Esheria. Not court-issued or certified.

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HIGH COURT CRIMINAL CASE NO 109 OF 2009

REPUBLIC.....PROSECUTOR

VERSUS

EDWARD MURIUKI NYAGA.....ACCUSED

SENTENCE

1. The convict EDWARD MURIUKI NYAGA was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. He pleaded not guilty and as stated in the judgment his trial proceeded before Justice Ombija who heard the evidence of fourteen prosecution witnesses before retiring from the Judiciary. This matter thereafter proceeded before me where I heard the evidence of only one prosecution witness and the accused defence and upon the said evidence found the accused guilty and convicted the same as charged.
2. In compliance with Section 216 of the Criminal Procedure Code which provides as follows:-
“The court may before passing sentence or making any order against an accused person under Section 215 receive such evidence as it thinks fit in order to inform itself as to the sentence/order properly to be passed.”

and in compliance with the Judiciary Sentencing Policy Guidelines No. 23, the court ordered for pre-sentencing report which was duly filed.

3. In the said report the following issues were highlighted:

- The accused was a track driver in the military (KDF) until the time of his arrest.
- The family had high expectation from the accused after he joined the army.
- The responsibility of taking care of the family is now upon his sister.
- The father of the accused sold all his cattle to settle legal fees for the three advocates who were instructed to defend the accused.
- The accused denied the charge stating that he only assisted one Daudi (Hannington Ndwiga) to withdraw the money from the deceased account.
- He had been in custody for eight (8) years which should be taken into account.

On victim impact:-

- The deceased was the sole breadwinner for his wider family.
- It was distressful and hurting to learn that the deceased cell phone number was active even after his death and somebody kept on sending them messages.
- They have not forgiven the offender since one of the daughters of the deceased had to drop out of school and become a house girl for two (2) years so as to raise fees.
- It was concluded that the accused is pleading for leniency.

4. In mitigation Mr. Njanja for the accused submitted that the accused had never had any criminal activity and had lived as peaceful with members of society. It was submitted that the accused had a child born out of wedlock aged nine (9) years whom he took care of who is now in custody of his parents. He therefore pleaded for lenient sentence. Mr. Meroka for the State submitted that the accused was a first offender but the court ought to give the statutory sentence.

5. The purpose or objectives of sentence as per the Judiciary Sentencing guidelines No. 4 are as follows:-

- 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 refrain from the criminal conduct 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 occasion victims', communities' and offenders' needs and justice demand that these are met. Further to promote a sense of responsibility through the offenders 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.
6. In this matter the evidence tendered is that the accused had lost substantial amount of money when he was conned as a result of his attempt to buy red mercury and in attempt to recover the said money held the deceased during which period of time money was withdrawn from the deceased bank account through the ATM and when the account was blocked the deceased was killed and body dumped away. It was also noted that money was withdrawn from the bank account of the wife of the deceased whose ATM card the deceased had.
7. Whereas one can understand the pain of losing money, there are set channels for recovery of the loss which should not lead to loss of life. From the post mortem report it is clear that the deceased died a very painful death with multiple fractures on the face and head and multiple stabbed wounds on the neck and chest.
8. This is therefore a case which calls for retribution, deterrence and denunciation sentence to send a clear message that there are proper legal channels which the accused would have used rather than leading to the death of the deceased person.
9. Section 204 of the Penal Code provides that a person convicted of murder shall be sentenced to death and having set out the objectives or purpose of sentencing the accused herein I am satisfied that the sentence provided herein will serve the said purposes. The accused is therefore sentenced to suffer death as provided for in law and it is so ordered.
10. The accused has a right of appeal both on conviction and sentence.

DATED, SIGNED and DELIVERED at Nairobi this 2nd day of November, 2017

.....

J. WAKIAGA

JUDGE

In the presence of:-

Mr. Meroka for the State

Mr. Businde for the accused

Accused person present

Tabitha court clerk

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://new.kenyalaw.org/akn/ke/judgment/kehc/2017/9661/eng@2017-11-02>

CASE PAGE <https://chat.esheria.ai/case-law/kenya/republic-v-edward-muriuki-nyaga-2017-kehc-9661-klr-murder-high-court-2017>

Prepared on 23 October 2026 · Esheria