



**Republic v Muyila (Criminal Case E049 of 2023)  
[2024] KEHC 11719 (KLR) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11719 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL CASE E049 OF 2023  
REA OUGO, J  
SEPTEMBER 26, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**NICKSON GABRIEL MUYILA ..... ACCUSED**

**JUDGMENT**

1. Nickson Gabriel Muyila the accused after a successful plea bargain pleaded to the offence of “Manslaughter contrary to section 202 as read with section 205 of the Penal Code”. The particulars of the offence are that, “on the 4<sup>th</sup> day of December , 2023 at Sango village Nageni Sub-location Muchi Location in Webuye East Sub-County within Bungoma County unlawfully caused the death of Simon Kasoli Muyila.
2. The facts as adduced by the prosecution were as follows; On the 30.11.2023 the accused Nickson Gabriel Muyila went to his stepmother’s at Sitikho in the company of 2 male adults and forcefully carried 2 minors, Ayub Kuoba and Simon Kasai Muyila (the deceased) both were aged below 15 years. He carried them using a motor cycle. The 2 male adults who assisted the accused person to carry the 2 minors remain unidentified to date. The accused person instructed the 2 minors to be selling potatoes at Nangoto area which activity the minors carried on and would hand over the daily proceeds to the accused person until 2.12.2023 when the minors started having a misunderstanding with the accused person due to the sales and this promoted the minors to seek refuge at the home of Robert Kwendo Muyila their uncle.
3. On the 3.12.2023 according to Ayub the accused arrived at the home of their uncle threatening to kill the 2 minors. They managed to hide. Ayub was 14 years at the time the offence was committed. Ayub said that on the 4.12.2023 the accused returned to Kwendo’s home in the company of the 2 same men and still on motor cycles arrived at the home and took away the 2 minors after informing Robert Kwendo that he was taking them to police station so that they pay him his money. Ayub said



they went to the accused's house at Sango and were assaulted by the accused and the 2 men who are yet to be identified using sticks, plastics and scrubbing brush handle. After sometime the three men put the 2 minors on the motor cycle and the accused person rode the motor cycle because they were not able to walk or stand on their own. As he rode the motor cycle the deceased according to Ayub was spitting blood and he was also asking for water. He took them to Sivilie Centre within Kaburengu to a clinic and according to Margaret Mukhosi an employee of the clinic the accused told her he was just a good Samaritan and that he had found the children besides the road. The deceased according to Ayub was more injured worse than Ayub and the deceased was taken into the facility with the help of the watchman and the accused person ran away with Ayub on the motorcycle to his maternal uncle's place where he informed his grandmother that unknown people had assaulted the deceased Simon and that he had passed on. The grandmother informed her sons the accused persons uncles who confronted him and he ran away and he surrendered to the police at Navakholo police station. PC Andrea Ndubi the Investigating officer in this case upon being instructed to investigate the matter rearrested the accused person and took him to Webuye police station. Interrogated witnesses including the minor Ayub the uncle Robert Kwendo. PC Ndubi attended an autopsy in the company of the deceased's uncle called Robert and the cause of death was confirmed as hemorrhage of the brain secondary to assault. The investigating officer visited the accused's place at Sango and recovered broken pieces of hand brush sticks and sticks believed to be murder weapons. They escorted the accused person for mental assessment at Webuye hospital and he was found to be mentally fit to stand trial. Upon conclusion of the investigations the accused was charged before the court with offence of murder which has been reduced to manslaughter subject to the accused pleading guilty to the same offence plea bargain between the accused person and the prosecutor.

4. After convicting the accused on his plea of guilty I sought a pre-sentence report. A pre-sentence report dated 17.9 2024 states as follows; the accused is 26 years old and is from a polygamous family and is the firstborn and has 5 other siblings. The accused does not enjoy any cordial relationship with his father. The accused does not heed to any parental advise and has largely stayed away from home. Failure to submit to parental authority may have been responsible for the arrogance and the violence. His father is not ready to welcome him back home at the moment, which makes the home situation unsupportive for community interventions. The accused's wife went back to her home with their two children. The finding was that the accused is negatively perceived within his extended family and the community. He is suspected of criminality and was described as a violent character. His low level of education, lack of exposure, and inadequate mentorship may be responsible for his irrational decision-making.
5. The deceased was a step brother to the deceased. The deceased was 17 years old. According to the deceased's mother the accused had tried to eliminate the deceased before. The deceased's mother stated that the accused is not remorseful and has even threatened her from custody. She is still bitter. The community does not want him back in the community. The report states that the accused is a high-risk offender who requires close monitoring and supervision to prevent him from recidivating back to crime. Since the accused will not enjoy community acceptance and the home situation is unreceptive and because his release will ignite public rage, thus the offender is not suitable for non-custodial supervision, and an alternative sentence is recommended.
6. The accused is a first offender.
7. Mr. Sabwami for the accused submitted the following in mitigation: The accused is remorseful and he is a first offender. He had no intentions of committing the offense. He has been in remand for about a year. He had been taking care of his family. He is a young man and his energy will not be put to good use in prison and he seeks leniency.



8. I have considered the probation report, the facts, the period the accused has been in custody, that he is a first offender and the guidelines on sentencing. A young man lost his life due to the accused's irrational acts and violent acts. His pre-sentence report is very unfavorable. The sentence provided in law for the offense of manslaughter is life imprisonment. The facts contribute to the kind of sentence a court can impose. In my view, the accused does not deserve a non-custodial sentence. I have taken into account the period the accused has been in custody. I sentence Nickson Gabriel Muyila ,the accused to serve twenty years (20) . The accused has right of appeal within 14 days.

**DATED, SIGNED AND DELIVERED AT BUNGOMA ON THE 26<sup>TH</sup> DAY OF SEPTEMBER 2024.**

**R.E.OUGO**

**JUDGE**

In the presence of:

Nickson Gabriel Muyila- Accused

Miss Matere For the State

Mr. Sabwami For the Accused person.

Wilkister C/A

