



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Mbingo (Criminal Case 4 of 2014)
[2023] KEHC 3824 (KLR) (29 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 3824 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE 4 OF 2014
DO CHEPKWONY, J
MARCH 29, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

IBRAHIM DZINYAO MBINGO ACCUSED

RULING

1. The accused persons Ibrahim Dzinyao Mbingo is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#), whereby he was tried, and convicted for the murder of Mwanyumba Lewa.
2. The matter was then referred to the Probation Officer for a Social Inquiry to be conducted and a Pre-sentence Report in respect of the accused/convict be filed to guide on the sentence to be imposed herein.
3. The sentencing process involves a court balancing the rights of those involved in the criminal justice process and protection of the rights of the community. The courts are expected to impose sentences that are just and appropriate to the circumstances of each case; while at the same time ensuring similar sentences for similar offenders.
4. Section 24 of the [Penal Code](#) contemplates a list of punishment that a court may impose, and by the very use of the word 'may' implies the discretion of power of Judicial Officers in sentencing except for cases, which provide for either minimum and or maximum sentences or fines and those which provide for mandatory death sentences.
5. A Pre-sentence Report was filed and I have read through the same. According to the Probation Officer, the accused person was painted negatively, by the family members, administration leaders, neighbours and friends. It was reported that although no records had been retrieved in regard to the accused, he was reported to be a notorious criminal and law breaker who has disturbed people in the community



of Jungu during his entire stay there. He is reported to be violent, dangerous and always attacks people in the village even over slight misunderstanding. It was further reported that most villagers fear the accused person and hold a negative opinion about his being re-integrated and rehabilitated, which is what the victim's family also fear.

6. In Mitigation, M/S Musyoka, counsel for the accused person stated that the accused was a widow and father of 4 children. It is stated that he has reformed during his stay in custody and prays for forgiveness and leniency.
7. I have considered the nature of offence, the manner in which the deceased was murdered alongside the mitigation statement by the accused person and Pre-sentence Report. I find that although the accused person has been presented as a 1st offender, the Pre-sentence Report on him is negative hence the recommendation of the Probation Officer that he has high chances of re-offending.
8. I therefore find that the circumstances under which the deceased died, as revealed by the evidence, confirm the sentiments expressed in the Pre-sentence Report that the accused is violent and will occasionally attack members of public even over a very slight misunderstanding. In the instant case, the accused stabbed the deceased and caused his death because of being removed from a seat which had been reserved for visitors at a funeral. It is my considered view that a sentence to be meted out against the accused person be one that would achieve retribution, rehabilitation, deterrence and community protection.
9. I proceed to sentence the accused person to serve five (5) years imprisonment.
10. Upon release, the accused person to remain under supervision by the Probation Officer for a period of three (3) years. The accused person has a right to appeal both on the conviction and sentence while the State has a right of appeal on the sentence.
11. It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 29TH DAY OF MARCH 2023.

D.O CHEPKWONY

JUDGE

In the presence of:

M/S Valerie counsel for the State

M/S Musyoka counsel for the accused person

Accused person present

Court Assistant – Mwenda/Hamisi

