



REPUBLIC OF KENYA



**Republic v Ijaka (Criminal Case E028 of 2021)  
[2023] KEHC 21004 (KLR) (28 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21004 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL CASE E028 OF 2021**

**DK KEMEL, J**

**JULY 28, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**BRIAN ISAAC IJAKAA ..... ACCUSED**

**RULING**

1. Brian Isaac Ijaka has been charged with an offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. Vide a judgement dated May 22, 2023, the accused herein was found guilty of the offence and accordingly convicted.
2. During the sentence hearing conducted on July 5, Mr Wamalwa Robert, learned counsel for the defence, presented mitigation on behalf of the accused herein. It was submitted that the accused is remorseful and is the only male child in the family and that his father is disabled. Counsel further prayed for leniency as the accused is a young man who has just turned 23 years and who managed to score a C in last year's KCSE examinations while still in remand custody. The counsel urged this court to exercise leniency since the accused has learnt a lesson already while in custody. A non-custodial sentence was proposed. It was also submitted that the probation officer in his report dated July 4, 2023 is rather emotional and that the court should not rely on it. Learned counsel entreated the court to consider the fact that God forgives all sinners including those who have been convicted of murder.
3. Miss Mukangu for the prosecution submitted that a custodial sentence is suitable in the circumstances since the accused has already been found guilty and convicted. It was submitted that the accused ended the life of a man aged 24 years who was a student and had a whole life a head of him. It was submitted that the accused had been dissuaded from attacking the deceased but he declined as he had a lot of anger which requires rehabilitation since he has not yet reformed. It was further submitted that remorse alone is not enough punishment. It was also submitted that the pre-sentence report reveals that the



accused has anger related issues and that he is known in the village to be a violent person and is thus not suitable for a non-custodial sentence.

4. This court called for a pre-sentence report. The same has been duly filed by the County Probation Officer. It is dated July 4, 2023 and indicates that the accused has anger management issues and that he had been having a history of violence and stealing in his community and that if released back to the community then there is a likelihood of a revenge attack.
5. I have given due consideration to the submissions of learned counsels as well as the sentiments of the County Probation Officer, Bungoma. Under Section 204 of the Penal Code, the punishment for murder is a sentence of death. However, following the decision of the Supreme Court in *Francis Karioko Muruatetu & 2 Others -vs- Republic (E2017) eKLR*, the mandatory death sentence was found to be unconstitutional and that courts should receive mitigating circumstances from the offender before meting out appropriate sentences thereafter. The circumstances leading to the death of the deceased are rather tragic. It kicked off from a spat between the deceased and accused wherein the deceased had claimed that the accused had stolen one of his trousers and that a scuffle ensued in which the deceased slapped the accused and managed to have him kicked out of a dowry ceremony. The accused left the venue and later surreptitiously crept back and managed to hit the deceased on the head with a plank of timber. Had the accused opted for other avenues of redress, if he felt offended, the deceased would be alive today. It is clear that this was out of revenge and disproportionate to the theft allegations and being ejected out of the dowry ceremony. It is noted that the deceased died from that single blow to the head which is an indication that the accused really wanted the deceased to die. The deceased then aged 24 years old and who had a full life ahead of him died a painful death. This was not necessary thanks to the ungovernable anger of the accused.
6. Defence counsel has sought for leniency for the accused regarding the incident. The court of Appeal in *Charo Ngumbao Gugudu -vs- Republic (2011) eKLR* held as follows: -

“ Further, the law is that sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that it is thus not proper exercise for the court to fail to look at the facts and circumstances of the case in their eminent before settling for any given sentence. see *Ambani -vs- Republic ( 1990 ) eKLR*.”
7. From the postmortem report produced as Exhibit 1, the injuries inflicted on the deceased comprised of a depression on the skull, cut wound on the skull, massive extracranial and intracranial hematoma. The opinion of the pathologist is that the cause of death was severe head injury due to blunt head trauma. It seems the single blow on the head of the deceased led to his death. Had the accused heeded the advice by those in company of the deceased to leave the venue and not to come back, the deceased would be alive today. The deceased was then aged 24 years old with a full life ahead of him. The accused, due to this unmanageable anger, went and came back in revenge and viciously hit the deceased leading to his death. The injuries indicated on the post mortem report shows that the force used was quite strong as the piece of timber smashed the skull of the deceased. This was a clear indication that the accused wanted to finish off the deceased. The deceased deserved to continue with his life since the right to life is sacred and basic too humanity itself.
8. It is noted that the accused has been in custody since the time of his arrest to date. The circumstances of the case as well as the pre- sentence report calls for a custodial rehabilitation for the accused herein. The pre-sentence report has indicated that the local administration as well as neighbours are in agreement that community rehabilitation is not tenable. Learned counsel for the accused has maintained that the report is biased and that the author is emotional. On the contrary, I find the report to be comprehensive and balanced. I find that the accused will surely benefit from the custodial rehabilitation despite the



fact that he is still a young man with a full life ahead of him. The custodial rehabilitation will help to mould him into a better person before being released back to the society. As noted above, the accused cut short the life of the deceased yet the right to life is sacred and basic to humanity itself and enjoys constitutional protection under Article 26(1) of the *constitution*. The deceased did not deserve to die. Taking all factor into consideration, iam of the view that a sentence of twenty (20) years imprisonment is appropriate in the circumstances. And that the said period will take into account the period spent in custody.

9. In the result, I order the accused herein Brian Isaac Ijaka to serve a period of twenty (20) years' imprisonment which shall commence from the date of arrest namely July 26, 2021.

10 It is so ordered

**DATED AND DELIVERED AT BUNGOMA THIS 28TH DAY OF JULY 2023**

**D KEMEI**

**JUDGE**

**IN THE PRESENCE OF: -**

**BRIAN ISAAC IJAKAA ACCUSED**

**WAMALWA R FOR ACCUSED**

**AYEKHA FOR PROSECUTION**

**KIZITO COURT ASSISTANT**

