



**Republic v Wamboko & another (Criminal Case 24 of 2015)
[2023] KEHC 23071 (KLR) (29 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 23071 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 24 OF 2015
SC CHIRCHIR, J
SEPTEMBER 29, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

ANTONY TITO WAMBOKO 1ST ACCUSED

CHARLES ODINGA KHATORO 2ND ACCUSED

RULING

1. The accused persons were convicted of the offence of murder by Justice Musyoka on April 28, 2023. The matter was later placed before me for purposes of sentencing only. The Judge had also given directions for preparation of presentencing Report, which report has now been filed.

Presentencing Report

Report on the 1st Accused:

2. According to the presentencing report, the 1st accused has a history of violence, defiance and involvement in illegal activities like changaa brewing . The community feels intimidated by him. The probation officer discounts a non-custodial sentence.

Report on the 2nd Accused

3. He is reported to have relocated from his former residence as per the cultural demands which require that the offender is excommunicated from the community. He admits that he erred by urging the locals to attack the Deceased without ascertaining what was going on. It is reported that he has sought reconciliation with the victim's family. He has no previous history of criminal activities.



1st Accused's Submissions

4. Through his counsel Mr Shivega, the 1st accused prays for leniency while stating that he has demonstrated capacity to reform. It is submitted that he has 7 children who depend on him and that he should be given a chance to take care of them. He further submits that he is remorseful.

2nd Accused Submissions

5. Through his counsel Mr Ondieki, the 2nd accused submits that he has 7 children the last of whom is 4 years old, and siblings who all depend on him. That he is remorseful; that he has maintained a good relationship with the victim's family. That he is a first offender. The accused prays for leniency.

Prosecution's submissions.

6. Ms Osoro for the state argued that when the legislature passed the law on the charge of murder it intended the sentence to be severe. She further points out that the sentence meted out should balance the interest of the society, the victim's family, and an opportunity for the accused to be rehabilitated. She prays for a custodial sentence, one that would speak to the fact that life is precious and must be protected.

Determination

7. I have considered the presentencing report, and the parties' respective submissions.
The offence of murder attracts death sentence. (section 204 of the penal code). However following the supreme court decision in *Francis Muruatetu & Ano vs Republic* (2017) e KLR, the mandatory nature of death sentence was declared unconstitutional, giving the courts the liberty to pass any lesser sentence than that prescribed by section 204 of the penal code.
8. In considering appropriate sentence, this court is required to consider both the mitigating and aggravating circumstances. The first accused has expressed remorse, prays for a chance to reform and pleads that he has left 7 children at home who require his care. The 2nd Accused has also expressed remorse and has submitted that he has maintained a good relationship with the victim's family
9. Being a first offender, remorse and efforts at reconciliation with the victim or victim's family are all mitigating factors. However, this court cannot lose sight of the fact that a life was lost and the punishment meted out must speak to the sacred nature of human life.
10. Taking both the mitigating and aggravating factors as aforesaid, I hereby sentence the Accused persons to 30 years each in prison.
11. The sentence will run from April 5, 2015 being the day that accused person were first arraigned in court.
12. Right of Appeal- 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 29TH DAY OF SEPTEMBER, 2023

S.CHIRCHIR

JUDGE.

