



**Republic v Bwanadi & another (Criminal Case 12 of 2016)
[2022] KEHC 15745 (KLR) (30 November 2022) (Sentence)**

Neutral citation: [2022] KEHC 15745 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
CRIMINAL CASE 12 OF 2016
RL KORIR, J
NOVEMBER 30, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

BWANADI OMAR BWANADI 1ST ACCUSED

ABDI ALI MOHAMED 2ND ACCUSED

SENTENCE

1. Bwanadi Omar Bwanadi and Abdi Ali Mohamed (1st and 2nd accused respectively) were charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* cap 63 Laws of Kenya. The particulars of the offence are that on the June 10, 2016 at Mbwanjumi Village in Lamu East sub-county within Lamu County jointly murdered Mohamed Shee Mohamed Omar.
2. At the conclusion of the trial, this court found each of the accused guilty of murder of the deceased and convicted them accordingly. The judgement was delivered virtually.
3. Defence counsel told the court that he was unable to access his clients at the prison to take their instructions on mitigation. He asked the court to exercise leniency and to call for a pre-sentence probation officer's report to consider while sentencing.
4. The 1st accused stated in his mitigation that he did not commit the offence. He told the court that if they were the ones who were responsible for the many cases of murder in Lamu, then the same would have stopped as they have been in custody for a long time while the killings continued.
5. The 2nd accused stated in his mitigation that he did not commit the offence but that they were charged as a result of enmity by the victim's family.
6. On record is a pre-sentence probation officer's report dated February 24, 2022 received in this court on July 15, 2022. Annexed to the report is a document addressed to the in charge probation and after



care services office in Tana Delta by the county probation office in Lamu containing the victim impact statement.

7. The probation report in respect of the 1st accused states that he hails from Bwajumwali Village where was the first born of 4 siblings. His father Omar Bwanadi was a farmer at Miabogi Village while his mother was deceased. That 1st accused dropped out of school in class six in 1997 and assisted his parents in farming. He was married with 4 minor children. He used to abuse drugs before incarceration.
8. According to the report, the 2nd accused was aged 39 years and hailed from Bwajumwali Village. He attended madrassa classes and engaged in farming. That he had children by different women but who left him when he was arrested. The report further states that 2nd accused previously abused drugs before his incarceration.
9. According to the probation officer, both accused claimed to have been victimized red as they did not commit the offence. That in the past 6 years there have been reports of a series of murders in their locality meaning that they were not the perpetrators. The report further states that both accused prayed for a lenient sentence so as to be re-united with their families.
10. According to the probation report, the victims of the offence went beyond the deceased's family and included the villagers and government officials as the deceased was a senior chief. The report further stated that the victims who were interviewed sought anonymity as they feared reprisal. That the victims called for a deterrent sentence due to the past antecedents of both accused and also because the murder of the chief led to many other murders targeting government officials including:-
 - i. On April 22, 2019, Ms Amina Bakari, 30 years, who was a volunteer peer educator with the Kenya Red Cross Society and a Nyumba Kumi official.
 - ii. On December 11, 2019, Mbajumwali Location Chief Mohamed Haji Famau and his assistant Malik Athman Shee of Myabogi Sub-Location
 - iii. October 5, 2019 Police Constable, Hesbon Okemwa Anunda, attached to the same police post, was killed. His mutilated body was found dumped in a thicket on the Mbajumwali-Kizingitini road on October, 2019 after disappearing on his way to Kizingitini Police Station from Tchundwa Police Post.
 - iv. June 8, 2020 a policeman PC Rodgers Odhiambo who was attached to the Tchundwa Police Post was slashed to death by a machete-wielding gang at Tchundwa Village in Lamu East.
11. In considering sentence in this case, I am guided by the [*Judiciary Sentencing Guidelines*](#) (2014) which lists the objectives of sentencing to include: retribution, deterrence, rehabilitation, restorative justice, community protection and denunciation.
12. I am further guided by the principles set out by the Court of Appeal in the case of [*Thomas Mwambu Wenyi Vs Republic \(2017\) eKLR*](#) which cited the decision of the Supreme Court of India in [*Alister Anthony Pereira vs State of Maharesbtra*](#) and held as follows:-

“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive



for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”

13. I have considered the mitigation of the accused. Each accused insisted that they did not commit the offence and only asked for leniency so as to be reunited with their families. They did not express any remorse.
14. I have looked at the victim impact statement contained in the detailed report on the security situation in Lamu prepared by the probation office and the views of the victims contained in the person interviews by the probation officer. I must at the outset point out that the numerous murder incidents outlined in the report cannot be held against the two accused. They were not charged with those offences. The incidents may demonstrate a deteriorating state of security for which the security agencies ought to find a lasting solution. They are only relevant as a pointer to the need for a deterrent sentences upon conviction.
15. I consider however that the murder of a government official, in this case a senior chief who was going about his official duty, an aggravating circumstance which calls for a deterrent sentence. Such an offence may easily lead to a breakdown of law and order with the attendant insecurity.
16. I have considered the injuries inflicted on the deceased. At paragraph 7 of its judgement the court stated respect to the evidence of PW9:-

“He observed that the deceased who was aged about 57 years had multiple cuts on the upper body and had excessive loss of blood. The upper bone of the left arm was cut and the arm severed. There were multiple cuts on the left side of the face and long cuts on the base of the neck extending to the lower back. Dr Kombo opined that the cause of death was severe hemorrhage due to multiple deep cuts. He produced the post-mortem report as prosecution exhibit No 2.”
17. I have considered that the accused were not remorseful and only prayed for a lenient sentence. It is indeed their right to hold on to their innocence despite conviction as they are yet to exercise their right of appeal.
18. Taking into consideration all the factors above, I sentence each accused to serve 28 years in prison. The sentence shall be deemed to run from June 24, 2016 being the date they were first arraigned in court and placed in pre-trial custody.
19. Each accused has a right of appeal to the court of appeal against both judgement and sentence within 14 days of today.
20. Orders accordingly.

SENTENCE DELIVERED, DATED AND SIGNED AT BOMET THIS 30TH DAY OF NOVEMBER, 2022.

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R LAGAT-KORIR
JUDGE



Sentence delivered in the presence of the accused (virtually present at Malindi GK Prison), Ms Mkongo for the State, Ms Mulwa holding brief Mr Gekanana for the accused, and Juma/Kiprotich (Court Assistants)

