



Republic v Simiyu alias John Wambulwa Simiiyu (Criminal Case E037 of 2023) [2025] KEHC 1627 (KLR) (21 February 2025) (Sentence)

Neutral citation: [2025] KEHC 1627 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E037 OF 2023**

DK KEMEL, J

FEBRUARY 21, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

LUKA WALUBENGO SIMIYU ALIAS JOHN WAMBULWA SIMIYU . ACCUSED

SENTENCE

1. The accused herein Luka Walubengo Simiyu alias John Wambulwa Simiyu has been charged with an offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). Vide the judgment dated 29th November, 2024, the accused was found guilty and convicted accordingly.
2. Sentencing hearing took place on 3/2/2025 before Justice Shariff. I was called upon to rule on the sentence to be imposed having been the trial judge from the beginning. Mr. Wattanga, learned counsel for the defence submitted *inter alia*; that the accused is old aged seventy years and that he has an elderly wife; that he is operating on bonus lifewise; that the cause of the offence was a land dispute; that the deceased was killed by a mob; that the accused is the sole bread winner of his family; that he craves for leniency and that he prays to be considered for non-custodial sentence.
3. Miss Kibet, for the prosecution submitted inter alia; that the accused is a first offender; that a life of a vibrant Kenyan citizen was lost; that the deceased was the sole bread winner of his family; that considering the nature and magnitude of the offence as well as the accused's old age, she leaves to the court to decide on the sentence.
4. This court called for a pre-sentence report by the probation department. The same is dated 16th December, 2024. The same indicates inter alia; that the accused is the first born among eight children; that both accused's family and extended family are functional and have strong ties assisting one another when need arises; that accused has good interpersonal relationship with the family and the community at large; that accused's father had 26 acre piece of land at Buteywa area some of which was sold in



early 1970; that none of the accused's family members have a history of being in conflict with the law. Further, it is noted that the accused is a class two dropout due to inadequate school prerequisites; that the accused assisted his parents with chores; that the accused began to uproot tree stumps and burning charcoal to eke a living; that he is married with eight children; that all the children are grown up and married and living in different areas; that the accused is a calm person and that prior to the offence, had no criminal records. The accused denies committing the offence; that at the time of the offence, he had gone to uproot tree stumps at the home of one Protus; that upon inquiry, it was established that there existed a land dispute between the deceased's father and the accused's family originating from 1980's; that the deceased's father had bought a ten(10) acres from Ben Simiyu who had in turn bought the land from the accused's father; that there has been several cases concerning the said piece of land; that the issue brought great animosity between the two families; that during the incident, the deceased with some young men hired by his father to mark the boundary engaged in serious confrontation with persons from accused's side and that the deceased succumbed as a result of the confrontation.

The pre-sentence report further indicates that the deceased's family is still traumatized by his death and suffered a lot especially deceased's father and deceased's wife; that the deceased met his death through acts of hooliganism; that the deceased's family is yet to establish the motive behind the death of their kin and that the accused's family have not even tried to engage the other family or shown remorsefulness. That the community attitude towards the offender and the offence is that; the community feels that justice was not served on the issues of the land in question and seems to lean on the side of the accused even though a life was lost.

5. The probation officer concluded that the accused herein a resident of Buteywa village Sitikho location within Webuye West Sub-County; that he has good family and community ties; he is a first offender; he denied committing the offence; he does not seem remorseful; that he casually reported that the deceased and a group of young men destroyed his house and that he does not know who committed the heinous act; that there seems to be great animosity between the two families which is not likely to end in the near future; that the plot of land which is in dispute had been bought by the deceased's father way back in 1981 from one Ben Wanyonyi who had bought it from the accused's father; that the deceased's father claim to be in possession of all the legal documents; that there has been several cases both at the local administration and the court contesting the ownership with the accused's side claiming that there was fraud in the manner in which the plot of land was obtained; they do not deny the fact that the deceased's father has legal possession of the documents; that the deceased's family reported that the accused's family has been intimidating and using hooliganism to scare and deny them access and use of the said plot of land as the rightful owner; that since 1981 when the piece of land was bought, the deceased's family have not put it into any meaningful use as the accused's family utilizes it forcefully; that the deceased's family were traumatized by the heinous act and the manner in which their kin lost his life; that they are yet to come to the terms as they were affected psychologically and emotionally; that the deceased was young at the time of his sudden death and working as a manager with Brookside Dairy Mombasa; that he left behind a wife and three young children; that he was a pillar and assisted his aging parents and siblings; that there is a possibility of revenge as no reconciliation has been initiated by both parties and that the justice system be given a chance to decide on the matter.
6. I have considered the mitigating submissions by both learned counsels for the parties herein. I have also considered the pre-sentence report filed by the probation department. 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* (2017) eKLR, the mandatory nature of death sentence was declared as unconstitutional and that the courts should receive mitigating circumstances from the offender before imposing an appropriate sentence thereafter and that the courts could as well impose a sentence of death if the circumstances warrant it.



7. From the post mortem report dated 18/8/2023 produced by Dr. Elly Kiplimo Kosgey (PW7) of Bungoma County Referral Hospital, as exhibit 4, it shows that the deceased was aged 46 years at the time of death. That he was hit with crude weapons on the head and became unconscious and that the injuries inflicted on the deceased's head caused a shortened cut on the deceased's right eye which was stitched. The dorsum of the hands was swollen; there was redness of eyes and penetrating injury of the eye as a result of a cut on the left femoral region; there was a depressed parietal bone fracture with massive subdural hematoma; there was torn brain tissue; that his prognosis was that the cause of death was severe head injury from blunt trauma with penetration injury to the eye. The deceased therefore sustained serious injuries and must have died a very painful death. The accused and his group of hooligans therefore had no right to end the life of the deceased. Had the accused opted for other avenues of redress, the deceased would be alive today. He did not deserve to die. The conduct of the accused in leading a mob to kill the deceased left no doubt that he really wanted to eliminate the deceased. The presentence report established that there existed a land dispute between the deceased's father and the accused's family originating from 1980s; that the deceased's father had bought a ten(10) acre from Ben Simiyu who had in turn bought the land from the accused's father; that there has been several cases concerning the said piece of land; that the issue brought great animosity between the two families; that during the incident, the deceased with some young men hired by his father to mark the boundary engaged in serious confrontation with persons from accused's side and that the deceased succumbed as a result of the confrontation. It is instructive that it was the accused herein who led the mob in attacking the deceased and thereafter running away from the scene. Further, the accused's family had lost an ELC case in Bungoma High Court ELC No. 81 of 2022 to the deceased's father who was given the right to occupy the land and to evict the accused and his family. The accused and his family having lost the court case, harboured revenge against the deceased's family hence upon seeing the deceased and his group on the land, they attacked them. The accused, if aggrieved by the court judgment, ought to have lodged an appeal to the Court of Appeal but not to take the law unto his hands.
8. As regards the sentence to be imposed, the Court of Appeal in the case of Charo Ngumbao Gugudu v. R (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 entirety before settling for any given sentence. See *Ambani v R* (1990) eKLR.”
9. It is noted that the accused has been out on bond during his trial. I find the circumstances of the case and the pre-sentence report indicates that the family of the accused have not initiated any reconciliation with the family of the deceased and that the circumstances warrant a custodial rehabilitation for the accused. I find that the custodial rehabilitation will benefit the accused herein before he can be allowed to rejoin the community. The custodial rehabilitation will help to mould him to be a better person before being released back to the society.
10. In the result, I order the accused herein Luka Walubengo Simiyu alias John Wambulwa Simiyu to serve a sentence of ten (10) years' imprisonment which shall commence from the date of conviction namely November 29, 2024.

DATED AND DELIVERED AT SIAYA THIS 21ST DAY OF FEBRUARY, 2025.

D. KEMEI

JUDGE



In the presence of:

Luka Walubengo Simiyu Accused

Wattangah for Accused

M/s Kibet for Prosecution

Ogendo/Mercy Court Assistant

