



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Wekesa (Criminal Case E010 of 2021)  
[2025] KEHC 2560 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2560 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL CASE E010 OF 2021  
DK KEMEL, J  
FEBRUARY 21, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**ALEX SIMIYU WEKESA ..... ACCUSED**

**RULING**

1. The accused herein Alex Simiyu Wekesa 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 29<sup>th</sup> November, 2024 the accused was found guilty and convicted accordingly.
2. Sentencing hearing took place on 3/2/2025 before Justice Shariff. However, this matter was placed before me to write the ruling on the sentence because I had handled the trial from the beginning. Mr. Wamalwa R, learned counsel for the defence submitted inter alia; that the accused is remorseful; that he is a first offender; that that he has been in custody for a lengthy period; that he is a family man with four children; that the deceased was his 2<sup>nd</sup> wife; that the children are parentless and suffering; that accused has an elderly mother; that he prays for lenience and or non-custodial sentence for the sake of the welfare of the children and that the period spent in custody be considered.
3. Miss Kibet, for the prosecution submitted inter alia; that the accused is a first offenders; that a vibrant life who would have contributed to the society building was lost; that the deceased died a painful death and that now the deceased's children are motherless; that the accused is a violent person who needs rehabilitation in order to learn on how to control his temper and learn better ways of resolving issues; that accused is a risk to the community and that a custodial sentence is appropriate in the circumstances.
4. This court called for a pre-sentence report by the probation department. The same is dated 16<sup>th</sup> December, 2024. The same indicates inter alia; that the accused is aged 31 years old; that he comes



from a humble upbringing and has nine siblings and who relate well amongst themselves, neighbours and community at large; that the accused's family is cohesive and they assist one another when need arises; that it is only the accused who is found to be in conflict with the law; that the accused has three young children from a previous relationship all below 10 years of age and who are under the custody of accused's mother; that the accused and deceased were married at the time of the incident and that they enjoyed a peaceful marriage; that the incident came as a surprise to many; that the accused had no child with the deceased; that reconciliation efforts were made and that the two families were brought together and that the deceased was buried at the accused's family land; that the family are in talking terms; that accused denied committing the offence; that accused is not able to recall what transpired on the material date; that he woke up to be informed of the incident; that accused agreed that the previous day before the incident he had differed with the deceased who went to her parents' home and returned the following day; that the accused never revealed the cause of the differences; that the accused is a first offender; that the accused has a positive report from the community; that the court uses its discretion to prefer appropriate sentence considering the nature of the offence.

5. 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.
6. From the post mortem report produced by Dr. Wanambisi Caleb Wata (PW4), as exhibit 1, the same shows that there were no physical injuries on the digestive system but that there was blood in her stomach. It further showed that the deceased's liver was ruptured. The doctor formed the opinion that the cause of death was hemorrhagic shock due to blunt trauma caused by a blunt object.

The circumstances leading to the death of the deceased appeared to be tragic. That the witnesses who first arrived at the scene found the deceased lying on the floor while the accused also laying beside the deceased; that the accused was breathing with difficulties and appeared to have ingested some poison as there was a bottle of triatix pesticide. It transpired from the evidence that the accused and the deceased had quarreled the previous day forcing the deceased to go to her parents' home. That the deceased later decided to visit her matrimonial home to collect her belongings. Apparently, the accused was stunned by he decision of the deceased to walk away from the marriage as she could not continue the constant abuse by the accused. It seems the accused was not wiling to let go of the deceased. Further, it had emerged that the accused was not lucky to sire a child with the deceased even after staying with her for nine months while the deceased had one child out of wedlock. This was what bread the anger on the part of the accused and therefore he plotted to eliminate the deceased. The deceased therefore died a very painful death in that the accused must have bludgeoned the deceased to death and upon realizing that she had died, attempted to take pesticide poison. However, the accused was rescued and taken for medication and after recovery he was made to face the law for what he had done. The conduct of the accused in killing the deceased just because she wanted to leave the marriage was not warranted as the accused could have resorted to other channels of redress such as engaging the clan elder or the chief or even the respective families. The deceased's only child has not been left without a mother.

7. As regards the sentence to be imposed, the Court of Appeal in the case of *Charo Ngumbao Gugudu Vs. 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 Vs. R* (1990) eKLR.”

8. It is noted that the accused has been in custody since the time of his arrest. This period will be taken into consideration pursuant to the provisions of Section 333 (2) of the *Criminal Procedure Code*. It is noted from the presentence report that the families of both the accused and the deceased reconciled and that the family of the accused had some form of compensation styled: “mapatano ya malipo ya kichwa” and thereafter the body of the deceased was buried at the home of the accused. The report further indicates that the accused is still in denial about committing the offence and therefore this is clear evidence that he is not remorseful. Despite the fact that both families have reconciled, the conduct of the accused in persisting to deny the offence leaves the court with no option but to propose a custodial sentence. 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 individual before being released back to the society.
9. In the result, I order the accused herein Alex Simiyu Wekesa to serve a sentence of fifteen (15) years’ imprisonment which shall commence from the date of arrest namely 14<sup>th</sup> February, 2021.

**DATED AND DELIVERED AT SIAYA THIS 21<sup>ST</sup> DAY OF FEBRUARY, 2025.**

**D. KEMEI**

**JUDGE**

In the presence of:

Alex Simiyu Wekesa.....Accused

Wamalwa R..... for Accused

M/s Kibet..... for Prosecution

Ogendo/Mercy..... Court Assistant

