



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Chemorei & 2 others (Criminal Case E007 of 2021)
[2025] KEHC 2289 (KLR) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2289 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E007 OF 2021
DK KEMEL, J
FEBRUARY 14, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

KENNEDY JUMA CHEMOREI 1ST ACCUSED

PETER OSUGOL ALIAS ODEA 2ND ACCUSED

DAVID NDIWA ALIAS SIRO 3RD ACCUSED

RULING

1. The accused herein Kennedy Juma Chemorei, Peter Obugol Alias Odea and David Ndiwa Alias Siro have been charged with an offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). Vide the judgment dated 6th December, 2024, the accused was found guilty and convicted accordingly.
2. Sentencing hearing took place on 7/2/2025. Miss Natwati, learned counsel for the defence filed mitigating submissions dated 3rd February 2025 which are inter alia; that all the three accused persons are first offenders and remorseful over the offence; that the accused persons have been in custody since February 2021 and that the period spent in custody was four years be considered; that they have families who rely on them; that at the time of the offence they were under the influence of alcohol and which had the effect of diminishing their criminal culpability by lowering the degree of blame; that the accused persons are not a threat to the community; that the family of the deceased have since forgiven them. Learned counsel prayed for lenience sentence for each of the accused persons. Learned counsel sought reliance in the cases of Republic Versus Elphas Malema Okuruvial Vihiga High Court Criminal Case No. E014 of 2023, Republic Versus Joan Chepkemol Alias Nemo Kericho High and Court Criminal Case No. E015 of 2022 Republic Versus JKN.



3. Miss Kibet, for the prosecution submitted that the accused persons are first offenders; that life was lost as the family of the deceased lost a lot since their bread winner is gone. She sought for custodial sentence.
4. This court called for a pre-sentence reports by the probation department. They are dated 15th January 2025. The same indicate that the accused persons are known chang'aa brewers in the area and that they were not happy about the role of the deceased who was a member of Nyumba Kumi Initiative and who viewed him as an informer and therefore found him to be a threat to their activities; that the community views the accused persons with suspicion; the members of the community were angered by the action of the accused in killing the deceased who was a leader of Nyumba Kumi. It also indicates that the family of the deceased are bitter with the loss of their kin and that the widow has now been turned into a beggar as she has to borrow to feed and pay school fees of the young family.
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. Ombongi Haron (PW6) of Bungoma County Referral Hospital, as exhibit 3, shows that the deceased had a swelling on the head measuring approximately 4cm. That there was an obvious depression on the same side indicating a skull fracture. He formed the opinion that the cause of death was severe head injury due to assault by blunt objects.
7. The injuries found on the body of the deceased showed that he sustained very severe injuries which could not allow him to survive. The evidence of the witnesses clearly show that the three accused persons descended on the deceased who was then working as a night guard at a nearby primary school and hit him with huge planks of wood and thereafter tied him onto a chair outside the office of the Head teacher and left him to die. The deceased was found the following morning already dead. He must therefore have died a very painful death. The accused persons who were known to be chang'aa brewers in the area killed the deceased so as to get rid of him because the deceased was a leader at Nyumba Kumi and an informer to the Local Authorities.
8. 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.”
9. It is noted that the accused persons were out on bond during the trial and therefore the provision of Section 333 (2) of the *Criminal Procedure Code* do not arise. It is noted that the accused persons ended the life of an innocent man who was a sole bread winner for his family just because they wanted to get rid of anyone from snooping into their illegal chang'aa brewing activities. I find the offence committed was serious and calls for deterrent sentence. I find custodial rehabilitation of the accused persons is appropriate in the circumstances. The custodial rehabilitation will help to mould them to be better persons before being released to the society. The accused persons would then be expected to engage in genuine and legal business in the society and to respect the sanctity of life.



10. In the result, I order each of the accused persons herein Kennedy Juma Chemorei, Peter Osugol Alias Odea and David Ndiwa Alias Siro to serve a sentence of twenty (20) years' imprisonment. The sentence for the 1st accused Kennedy Juma Chemorei shall commence from the date of arrest namely 13th February, 2021 while the sentence for the 2nd and 3rd accused shall commence from the date of conviction namely 6th December, 2024.

DATED AND DELIVERED AT SIAYA THIS 14TH DAY OF FEBRUARY, 2025.

D. KEMEI

JUDGE

In the presence of:

Kennedy Juma Chemorei.....1st Accused

Peter Osugol.....2nd Accused

David Ndiwa.....3rd Accused

M/s Natwati.....for Accused persons

M/s Kibet.....for Prosecution

Ogendo.....Court Assistant

