



**Republic v Nyongesa (Criminal Case E020 of 2022)
[2025] KEHC 1357 (KLR) (14 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 1357 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E020 OF 2022**

DK KEMEL, J

FEBRUARY 14, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

EVANS MUKWANA NYONGESA ACCUSED

SENTENCE

1. The accused herein Evans Mukhwana Nyongesa 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 6th December, 2024, the accused was found guilty and convicted accordingly.
2. Sentencing hearing took place on 17/1/2025. Mr. Onkangi, learned counsel for the defence submitted that inter alia; that the accused is remorseful; that the two families who are related by marriage are living peacefully; that accused has to rethink his actions and now promises to be a better person to the society; that he has children who currently are with his elderly mother; that all the children are under 10 years and in need of parental care; that the accused has no criminal history; 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 of senior citizen was lost; that the deceased's family has suffered; that the accused was fighting with another person; that the accused is a violent person who cannot control his anger.
4. This court called for a pre-sentence report by the probation department. The same is dated 15th January, 2025 the same indicates inter alia; that the accused became truant, fell pray to bad company and kept away from school; that he is a casual labourer; that he is married and blessed with three children; that he separated with the wife in 2022 due to a domestic dispute; that he is sociable, approachable and generous; that the area assistant chief submitted that he had never been known for criminal records nor criminal indulgence prior to the incident; that he had never presided over any matter where accused



had been allegedly accused of committing any wrong; that the deceased was aged 71 years with nine children and a resident of Namawanga in West Nalondo in Bungoma; that the family was traumatized and psychologically affected as they lost a bread winner; that the husband to the deceased has disability and that he depended mostly on the deceased; that the family of both accused and deceased are related; that they have met and made efforts to deliberate on the issue; that they have resolved to give the justice system a chance to decide on the matter.

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 (PW5) of Bungoma County Referral Hospital, as exhibit 2, shows that the deceased was hit with a metal bar on the head and became unconscious and that the injuries inflicted on the deceased's head caused depressed linear skull fracture involving right parietal extending to the right temporal, massive subdural hemotoma, right frontal parietal and right sided brain contusion. The doctor formed the opinion that the cause of death was severe head injury due to blunt force trauma. The deceased therefore sustained serious injuries and must have died a very painful death. The accused 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. She did not deserve to die. The conduct of the accused in killing the deceased who was not a party to their earlier disagreement left no doubt that the accused really wanted to eliminate the deceased. The presentence report has indicated that the accused and a son to the deceased had differences earlier on with accused accusing him of stealing his maize which escalated when they met in a drinking den. That it became physical and they fought. That the deceased heard the commotion and she went to intervene since both were armed. That in the process, the accused hit the deceased with a metal bar and she became unconscious succumbed to the injuries afterwards. Even though the accused had intended to injure the son of the deceased, the fact that the accused hit her with a metal bar is clear indication that he was out to eliminate anybody who came his way. The deceased was an elderly lady aged 71 years and who was not a threat to the accused in any way and therefore the accused killed an innocent person.
7. 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.”
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](#). I find the circumstances of the case and the pre-sentence report calls for 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 better individual before being released back to the society.
9. In the result, I order the accused herein Evans Mukhwana Nyongesa to serve a sentence of twenty (20) years' imprisonment which shall commence from the date of arrest namely 10th July 2022.



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

D. KEMEI

JUDGE

In the presence of:

Evans Mukhwana Nyongesa....Accused

Onkangi.....for Accused

M/s Kibet.....for Prosecution

Kizito..... Court Assistant

