



**Republic v Kwanda & another (Criminal Case E006 of 2022)
[2025] KEHC 2335 (KLR) (7 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 2335 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E006 OF 2022
DK KEMEL, J
FEBRUARY 7, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JACOB NALIANYA KWANDA 1ST ACCUSED

PAUL WANJALA ALIAS MUCHE 2ND ACCUSED

SENTENCE

1. Both accused herein 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 7th October, 2024, both accused were found guilty and convicted accordingly.
2. Sentencing hearing took place on 17/1/2025. Mr. Nabibia, learned counsel for the defence submitted inter alia; that the accused are remorseful and that they have young children who rely on them for support; that they have been rehabilitated and reformed while in custody; that their family is ready to provide alternative accommodation so as to support their request for a non-custodial sentence.
3. Miss Kibet, for the prosecution submitted inter alia; that both accused are first offenders; that a life was lost; that the deceased had three wives and 16 children who have now lost their breadwinner and provider; that the accused set fire to the deceased's house after killing him; that no efforts have been initiated by the family of the accused persons over reconciliation; that the deceased died a painful death; that the accused have anger related issues and violent in nature and should not be released on a non-custodial sentence since their lives will be at risk ; that a custodial sentence is suitable in the circumstances.
4. This court called for pre-sentence reports by the probation department. The same are dated 18/10/2024. The same indicates that the accused persons have anger related issues and that on the material date they went on a revenge mission at the home of the deceased who was a father in law



to the 1st accused herein. That the accused assaulted the deceased and later torched his house. That the villagers on the ground are still bitter with the incident and that the accused are not safe if they are released. That the accused persons ought to use lawful channels to resolve the differences with the family of the deceased but not to take law into their own hands. That the villagers razed down the houses of the accused persons following the incident. That no reconciliation efforts have been initiated over the incident to ease hostilities between the families. That both accused do not enjoy community acceptance in order to qualify for a non-custodial sentence.

5. I have considered the mitigating submissions by both learned counsels for the parties herein. I have also considered the pre-sentence reports 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 court could as well impose a sentence of death if the circumstances warrant it.
6. From the post mortem report produced by Dr. Reuben Nyongesa Kere (PW8) as exhibit 2, the injuries inflicted on the deceased comprised of wounds on both arms, closed fracture on right leg, ruptured spleen, fracture on the frontal part of the head. The doctor formed the opinion that the cause of death was cardiopulmonary arrest due to the critical head injury, spleen injury grade three and right tibia fracture due to physical assault secondary to a blunt object. The circumstances leading to the death of the deceased are rather tragic. The deceased's daughter had been a come we stay wife to the 1st accused herein and that they had been blessed with one child and that the two had had some disagreement forcing the wife to go to her parent's home nearby while leaving the child with her husband. Apparently, the deceased later accompanied his daughter plus other family members to the house of the 1st accused and managed to snatch the baby. This act seemed to have angered the 1st accused who teamed up with the 2nd accused who is his elder brother plus another one who is still at large and went to the home of the deceased to revenge.

The accused persons thus stormed the home of the deceased and attacked his family and then viciously attacked him until he died and that they burnt his house. The deceased therefore sustained serious injuries and must have died a very painful death. It is obvious that the disagreement between the 1st accused and daughter of the deceased could have been resolved amicably even by the village elder and the area chief. The accused persons therefore had no right to end the life of the deceased. Had the accused persons opted for other avenues of redress, the deceased would be alive today. He did not deserve to die. The conduct of the accused persons in killing the deceased and then torching his home left no doubt that they really wanted to eliminate the deceased. The pre-sentence report has indicated that the accused persons have ungovernable anger related issues and that members of the community are against their re-entry back to the community as they do not enjoy community acceptance.

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 persons have been in custody since the time of their 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 both accused. I find that the custodial rehabilitation will benefit the accused persons herein before they can be allowed to rejoin the community. The custodial rehabilitation will help to mould them to be better individuals before being released back to the society.

9. In the result, I order each of the accused herein Jacob Nalianya Kwanda and Paul Wanjala alias Muche to serve a sentence of thirty (30) years imprisonment which shall commence from the date of arrest namely 2nd March, 2022.

DATED AND DELIVERED AT SIAYA THIS 7TH DAY OF FEBRUARY, 2025.

D. KEMEI

JUDGE

In the presence of:

Jacob Nalianya Kwanda.....1st Accused

Paul Wanyama alias Muche 2nd Accused

Nabibia.....for both Accused

M/s Kibet.....for Prosecution

Kizito/Ogendo.....Court Assistant

