



**Republic v Musembe (Criminal Case 32 of 2017)  
[2025] KEHC 3481 (KLR) (20 March 2025) (Sentence)**

Neutral citation: [2025] KEHC 3481 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE 32 OF 2017  
SC CHIRCHIR, J  
MARCH 20, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**TOFIKO ODUONG MUSEMBE ..... ACCUSED**

**SENTENCE**

1. The Accused herein was convicted of the offence of murder on 17th October 2024. Thereafter a social inquiry was carried out by the probation office at Kakamega, at the request of the court.
2. In mitigation, Ms Wanyonyi for the Accused told the court that the Accused was a first- offender. That he is also the sole bread winner for his family, of two wives and six children. The counsel further informed the court that the family is making efforts towards reconciliation; that the community back home is receptive and willing to receive the Accused.
3. It is submitted that he is remorseful. He seeks for non- custodial sentence.
4. For the state, Ms. Osoro put emphasis on the fact that the Accused has been found guilty of the offence of murder. She further submits that the findings of the social inquiry report indicate that he is not remorseful. She asserts that a person who is not remorseful is incapable of being rehabilitated. She urged the court to impose a severe sentence.
5. I have considered the rival submissions and the findings of the probation officer as contained in the probation report.
6. Remorse and being a first offender are mitigating factors. The prosecutor has dismissed the Accused’s plea of remorse in view of the fact that the Accused continues to deny the offence despite the guilty verdict. A reading of the social Inquiry indeed negatives his submissions. The findings of the probation officer also show that his step- mother and his half- siblings are still bitter about the killing of the



deceased, who was the Accused's half – brother. The Accused's report that there are attempts at reconciliation, while it is a positive initiative, appears not to have been attempted.

7. I have considered the circumstances of the offence. Evidence on record show that the killing was vicious and brutal. I find it necessary to met out a sentence that speak to the sanctity, and dignity of human life.
8. Taking into consideration all the foregoing, I hereby sentence the accused to 35 years in prison. The sentence is deemed to have taken effect from 31/3/2022 being the date when he was first placed in custody.
9. Right of Appeal:- in 14 days.

**DATED, SIGNED AND DELIVERED VIRTUALLY ,AT ISIOLO THIS 20TH DAY OF MARCH, 2025 IN THE PRESENCE OF:**

**S. CHIRCHIR**

**JUDGE.**

In the presence of :

Godwin Luyundi- Court Assistant

Tofiko odoung- The Accused

Ms. Kagai for DPP

