



REPUBLIC OF KENYA



**Republic v Wanjala (Criminal Case E023 of 2022)
[2024] KEHC 199 (KLR) (19 January 2024) (Sentence)**

Neutral citation: [2024] KEHC 199 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E023 OF 2022**

DK KEMEL, J

JANUARY 19, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

ERICK LUBAO WANJALA ACCUSED

SENTENCE

1. Erick Lubao Wanjala was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars are that on the 20th day of July, 2022 at Namilama village Mihi sub- location Chetambe sub- county within Bungoma County, he murdered Amos Munialo Biketi.
2. Vide a Judgement dated 21.10.2023, the accused was found guilty and convicted accordingly.
3. During the sentence hearing conducted on 11.12.2023, Miss Lunani for the accused submitted that the accused is remorseful and that he is a first offender and breadwinner for his family. She submitted that the deceased was having an affair with accused's wife and hence the offence was committed in the heat of passion. Learned counsel sought for leniency.
4. Miss Mwaniki for the prosecution submitted that the pre- sentence report indicates that the accused still denies committing the offence. She submitted that the circumstances of the case revealed a premeditated murder as the accused discovered that the deceased had been having an affair with his wife and had planned for the murder. It was submitted that there were no circumstances for any kind of provocation as the wife of the accused had left home as the accused had already planned to relocate his family and thus could not again come for the deceased to continue with the affair. Learned counsel sought for a custodial sentence.
5. This court called for a pre – sentence report. The same is dated 24.11.2023. The same indicates that the deceased was a accused's grandfather who had some eyesight problems and who lived with him at



Nabuyole area. It indicates that later some allegations swirled around that the deceased was having an affair with accused's wife. This angered the accused and who opted to relocate his wife and children to another place and that he had earlier demolished the deceased's house following the allegation of adultery between the deceased and accused's wife. The report further indicates that the accused still maintains that he did not commit the offence.

6. The report further indicates that the family of the deceased is still bitter with the incident and are not willing to accommodate the offender once again.
7. I have considered the submissions of both learned counsels as well as the pre-sentence report. 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 - vs - R* (2017) eKLR, the mandatory nature of death sentence was declared unconstitutional and that courts should receive mitigation circumstances from the offender before imposing an appropriate sentence thereafter. The court could still pass a sentence of death if circumstances warrant it.
8. The circumstances leading to the death of the deceased are rather tragic in that the deceased who was then blind had been living a solitary life alone after the accused demolished his house following allegations that the deceased was having a secret lover affair with wife of the accused. The deceased was found lying on the floor facing upwards with a huge stone on his chest. The post mortem report indicated bruises on the chest wall, fractured ribs on both sides of the chest cavity (6-10 ribs on both sides), collapsed lung and massive hematoma on the head as well as bleeding in the brain. The pathologist (PW5) formed the opinion that the cause of death was severe head injury with respiratory failure due to blunt trauma with a heavy object. The huge stone (flat granite) was produced in court as exhibit one. It is obvious that the assault weapon could not allow the deceased to survive as it smashed his head and ribs. The deceased must have died a painful death. It transpired from the evidence that the deceased was relying on the accused for support as he was then blind and vulnerable. The deceased looked up to the accused for protection. The accused should not have killed the octogenarian man as a revenge even an alleged love affair between the deceased and accused's wife. The deceased did not deserve to die. Had the accused resorted to involving his family members and the clan elders for an amicable resolution, the deceased could be alive today. In any case, the accused had already relocated his wife and family elsewhere and thus the deceased did not pose a threat to his family. I am not persuaded by the defence counsel's submission that the offence was a crime of passion since the accused did not find the deceased in the sexual act (flagrant delicto) with his (accused) wife as he had already relocated his family elsewhere. It also transpired from the evidence that the accused had vowed to finish the deceased for messing around with his wife. The accused ought to have confronted his wife over the allegations and deal with her appropriately either through separation or divorce if need be but not to eliminate the deceased. The death of the deceased was thus not warranted at all. I find the circumstances of the offence herein require a custodial rehabilitation.
9. Regarding the sentence to be imposed, it is trite that sentence imposed on an accused must be commensurate to the moral blame worthiness of the offender and that the court must look at the facts and circumstances of the case in their entirety. See *Ambani vs R* (1990) eKLR. It is noted that the accused has been in custody all through the trial. This period will be taken into consideration. The custodial rehabilitation will benefit the accused even though he still has a full life ahead. The custodial rehabilitation will help to mould him into a better individual before being released back to the society.
10. In the result, I order the accused herein Erick Lubao Wanjala to serve a sentence of twenty (20) years imprisonment which shall commence from the date of arrest namely 20.7.2022.

DATED AND DELIVERED AT BUNGOMA THIS 19TH DAY OF JANUARY 2024.



D. KEMEI,

JUDGE.

In the presence of :-

Accused

Lunani for Accused

Kibet for Prosecution

