



**Republic v Wabwoba (Criminal Case 21 of 2020)
[2024] KEHC 3277 (KLR) (8 March 2024) (Sentence)**

Neutral citation: [2024] KEHC 3277 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE 21 OF 2020**

DK KEMEL, J

MARCH 8, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

ALVIN WABWOBA ACCUSED

SENTENCE

1. The accused herein Alvin Wabwoba has been charged with an offence of murder contrary to section 203 as read with section 204 of the *Penal code*. Vide the judgement of this court dated 19.1.2024, the accused was found guilty and convicted accordingly.
2. During the sentence hearing conducted on 29.2.2024, learned counsel for the defence submitted that the accused is a first offender and has been in custody for a long period and that he has learned his lesson. It was submitted that the accused has since reformed and now seeks for leniency from the court which should grant him another chance.
3. Miss Kibet for the prosecution submitted that they do not have any previous records regarding the accused.
4. A pre-sentence report was filed by the county probation officer Bungoma. The same is dated 1.2.2024. The same has brought to the fore issues inter alia; that the accused grew up in a hostile home environment which led him to have violent and irrational decision making which led to a conviction for an earlier offence of grievous harm for which he was sentenced to four years imprisonment; that the accused still denies involvement in the crime but at the same time seeks for leniency; that the family of the accused is yet to commence the process of compensating the victim's family even though they vouch for the release of their kin; that the family of the victim is still bitter and who seek for a deterrent sentence to be imposed so as to serve as a lesson to others and that they are no longer interested in any reconciliation or restitution talks with the offender's family; that the community is still reeling in shock



due to the conduct of the offender who had a persistent pattern of reoffending as well as temperamental and violent behavior when confronted by situations such as in the offence of grievous harm and the present offence.

5. 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 and two 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 impose a sentence of death if the circumstances warrant it.
6. The circumstances leading to the death of the deceased are rather tragic in that he was on his way when the accused herein and another who was later lynched by members of public confronted him and waylaid him outside accused's gate and viciously attacked him with a panga and a jembe (hoe). The arrival of the villagers at the scene somehow helped to prevent the accused from further injuring the deceased but the help however came rather too late as the deceased died soon afterwards. The villagers managed to apprehend accused herein and then lynched the accused's colleague. As noted in the judgment dated 19.1.2024, the accused and his deceased companion had lay in wait for the deceased to pass by their gate and then pounced on him and viciously attacked him. There was no exchanged of words between the deceased and his attackers and hence it is clear that the accused and his companion had planned to eliminate the deceased for reasons known to them. It transpired from the pre-sentence report that the reasons behind the killing of the deceased was due to a love triangle. Even if that could have been the case, the deceased did not deserve to die as there were other channels of redress such as engaging the clan elder (Mukasa) or the chief for resolution. Had the accused herein and his accomplice used these channels, the deceased would be alive today. He died a painful death. I find the circumstances of the offence herein requires custodial rehabilitation as it has transpired that the accused has some ungovernable anger and further not a first offender as he had earlier been sentenced to four years imprisonment for an offence of grievous harm. The custodial rehabilitation will help to mould him into a better individual.
7. Regarding the sentence to be imposed, it is trite that the sentence imposed on an offender 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 Republic* (1990) eKLR. It is noted that the accused waylaid the deceased who was innocently walking by and minding his own business and murdered him. He actually killed the deceased in cold blood. The accused in his defence did not advance any evidence to the effect that the deceased had threatened him in any way. I find this was purely blue murder. It is also noted that the accused has been in custody throughout the trial. This period will be taken into account pursuant to the provisions of section 333 (2) of the *Criminal Procedure Code*. I find the custodial rehabilitation will help to mould the accused into a better person before being released back to the society.
8. In the result, I order the accused herein Alvin Wabwoba to serve a sentence for thirty (30) years' imprisonment which shall commence from the date of arrest namely 10.5.2020.

DATED AND DELIVERED AT BUNGOMA THIS 8TH DAY OF MARCH, 2024

D.KEMEI

JUDGE

In the presence of

Alvin Wabwoba Accused



Nimka For Olonyi for accused

Miss Kibet for prosecution

Peter Court Assistant

