



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Nzou & another (Criminal Case E028 of 2021)
[2024] KEHC 2265 (KLR) (5 March 2024) (Sentence)**

Neutral citation: [2024] KEHC 2265 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE E028 OF 2021**

**A. ONG'INJO, J
MARCH 5, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

KILONZI KINYUNGU NZOU 1ST ACCUSED

MULWA MUSYOKI MUSYEMI ALIAS MBUTA LIKASU 2ND ACCUSED

SENTENCE

1. The accused persons Kilonzi Kinyungu Nzou and Mulwa Musyoki Musyemi alias Mbuta Likasu face a charge of murder contrary to Section 203 as read together with Section 204 of the [Penal Code](#).
2. Particulars of the offence are that Kilonzi Kinyungu Nzou and Mulwa Musyoki Musyemi Alias Mbuta Likasu on the 12th day of August 2021 at Maledi A village in Mwereni Location, Lunga Lunga Sub-County within Kwale County jointly murdered Kasha Chaka.
3. The accused persons were found guilty and convicted for the offence of murder. This court called for a Presentence Report and Victim Impact Statement which were filed on 18th January 2024.
4. In mitigation, Mr. Kakai Advocate for the 1st accused said that the 1st accused stays with his nuclear and extended family in Mweledi area. That his parents are aged, that he was the sole breadwinner until the events herein, and that the offence herein took everyone by surprise as he is a first offender. He appealed for court's leniency and prayed that he is accorded a non-custodial sentence.
5. Mr. Kakai Advocate holding brief for Ms. Mkongolo for the 2nd accused mitigated for the 2nd accused and said that the 2nd accused lives in Mweledi area in Lungalunga. That he is a first offender, that he has children aged between 2 years and 16 years, that he is the sole breadwinner, and that his nuclear and extended family have faced financial constraints due to his absence. He prayed for court's leniency and a non-custodial sentence.



6. The Presentence Report in respect of the 1st accused is to the effect that the accused, 33 years old, a husband and a father to 2 children prayed for leniency and asked for forgiveness. He said he was apologetic to the family of the deceased and asked for a chance to reconcile with them. The local administrators said they had no previous criminal record or instances of misbehavior and there were no threats to his safety in the community. That he is said to rank as a low risk offender and chances of reoffending are on the minimum. It was recommended that he be given a lenient sentence.
7. The 2nd accused is 59 years old, husband and a father to 5 children prayed for leniency and asked for forgiveness. He said he was apologetic to the family of the deceased and asked for a chance to reconcile with them. The local administrators said they had no previous criminal record or instances of misbehavior and there were no threats to his safety in the community. That he is said to rank as a low risk offender and chances of reoffending are on the minimum. It was recommended that he be given a lenient sentence.
8. From the Victim Impact Statement, the secondary victims reported that the parents of the deceased suffered psychological trauma and were affected by the death of the deceased although they had gone through the grief period and they felt relieved upon arrest of the suspect. Social inquiry established that the secondary victims did not report any physical threats from the 1st offender. They however highlighted to have some unresolved feelings towards the 2nd offender. It is indicated that the incident happened between close family members who were also neighbours and both parties were involved in the mourning of the victim. The secondary victims prayed that the honourable court deals with the 1st offender leniently so that he can go back and save his young family and children who depended on him and who are also relatives to the victim family.
9. In consideration of the Pre-Sentence Report, the Victim Impact Statement, mitigation by the accused persons, and the circumstances of the offence herein, this court finds that the offence committed by the accused persons and the manner in which it was committed is very serious. The accused persons deprived the deceased of his life contrary to Article 26 (1) and (3) of the Constitution of Kenya 2010 and did not care that the action was going to have far reaching psychological effects.
10. The offence committed requires a proportional and deterrent sentence that mirrors the negative consequences of one's involvement in criminal activities. A custodial sentence is called for and I hereby sentence the accused persons to a term of twenty (20) years imprisonment. The sentence for the 1st accused to run from 2nd September 2021 and sentence for the 2nd accused to factor in 8 months and 24 days which period he spent in custody between 2nd September 2021 to 26th April 2022 pursuant to Section 333(2) of the Criminal Procedure Code. Right of appeal within 14 days explained.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS THIS
5TH DAY OF MARCH 2024**

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of: -

Etropia- Court Assistant

Mr. Ngiri for the State

Ms. Nasimiyu Advocate for the 1st Accused

Ms. Mwangi Advocate for the 2nd Accused



Accused persons present in person

HON. LADY JUSTICE A. ONG'INJO

JUDGE

