



**Republic v Makokha (Criminal Case E021 of 2023)  
[2024] KEHC 5372 (KLR) (17 May 2024) (Sentence)**

Neutral citation: [2024] KEHC 5372 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL CASE E021 OF 2023**

**DK KEMEL, J  
MAY 17, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**TITUS WAKHISI MAKOKHA ..... ACCUSED**

**SENTENCE**

1. Titus Wakhisi Makokha had initially been charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code with the particulars being that on the 3<sup>rd</sup> day of June, 2023 at Wacheka village in Bungoma South Sub- County within Bungoma County, he murdered Richard Wakhisi Sifulo.
2. The charge against the accused herein was later reduced to one of manslaughter following a plea bargain agreement dated 4.4.2024. The court duly accepted the said plea agreement pursuant to the provisions of section 137H of the Criminal Procedure Code and that it satisfied itself on the factual basis of the plea agreement and that the accused was competent, of sound mind and had acted voluntarily in accordance with section 137G of the Criminal Procedure Code.
3. The new charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code was subsequently preferred against the accused herein. The particulars are that on the 3<sup>rd</sup> day of June, 2023 at Wacheka Village in Bungoma South- County within Bungoma County, he unlawfully caused the death of Richard Wakhisi Sifulo.
4. The facts in support of the charge as disclosed in the plea agreement dated 4.4.2024 are that on the 3.6.2023 one Anita Wanjala was at her home preparing dinner while the deceased who was her husband was outside the house eating roasted maize and who later received a call on his mobile phone and left. The deceased however did not return back home and that calls to his phone could not be picked. A search was commenced. Later, it turned out that the accused herein who operates a boda boda arrived



at his house and directed his wife to wash his wet and damp clothes the same night to which she declined and promised to do so the following morning. The accused herein left early in the morning to go wash his motor cycle and later came back and joined his brothers in the search of the deceased who was their father. He later led his siblings to where the body of the deceased lay near Chwele River. The body was collected and that the accused disappeared until the following day. The accused confessed on the 6.6.2023 that he had killed the deceased while in company of others. He was handed over to the police and later charged with the offence of murder. Later, the charge was reduced to one of manslaughter after a plea bargain agreement. The body of the deceased was examined by a pathologist who formed the opinion that the cause of death was massive bleeding due to multiple cuts. The post mortem report dated 9.6.2023 as well as an exhibit memo form plus a bundle of photographs were produced as exhibits.

5. The accused admitted the charge and further knowingly, voluntarily and truthfully admitted the facts read out herein. He was duly convicted on his own unequivocal plea of guilty.
6. During the sentence hearing, Mr. Wekesa for the accused submitted that the accused is remorseful for the offence and that he is a first offender and was remorseful. It was also submitted that the accused is the breadwinner for his young family and with one child. It was also submitted that the sentiments of the probation officer regarding the assertion that the accused is not remorseful for the offence since he has taken responsibility for the offence when he agreed to plead guilty to the lesser charge.
7. Miss Kibet for the prosecution submitted that the court should consider the fact that life was lost and that the offence was committed in a gruesome manner as it appears the accused did not respect his father at all. Learned counsel sought for a custodial sentence as the accused is a dangerous person.
8. The court called for a pre-sentence report. The same is dated 19.4.2024. The report points out the fact that the accused had developed an affiliation with persons of questionable character and that he is suspected of abusing alcohol and drugs. It also indicated that he is a confrontational and dangerous when under the influence of alcohol and drugs and could not hesitate to harm anyone who crossed his path. The report further indicated that his family are apprehensive should the accused be released as they fear him. Further, the community is not ready to welcome back as his house was razed to the ground following the killing of the deceased. The report indicates that the accused lacks a family support system that could help in a rehabilitation journey and thus not suitable for a non-custodial sentence.
9. I have given due consideration to the submissions of learned counsels as well as the sentiments of the County Probation Officer Bungoma. Under section 205 of the *Penal Code*, manslaughter is punishable by a maximum sentence of life in prison. However, this represents the maximum sentence which is usually reserved for the worst of such cases. This does not appear to fall in the category of the most heinous examples of manslaughter as regards the circumstances of the accused herein. The accused has admitted killing the deceased after a disagreement over a certain parcel of land. The accused through his learned counsel has sought for forgiveness. However, the act of the accused in killing his father and dumping the remains near the river revealed that he was a cruel person. He had the guts to dismember his own biological father just because of a disagreement over land yet he had the opportunity to resort to other channels of redress. This reveals that the accused did not have any respect for his father. The court, however takes into consideration the fact that the accused has saved judicial time vide the plea agreement herein. I am therefore inclined to rule out life imprisonment for the accused.
10. Case law could be the starting point in determining a custodial sentence for manslaughter since the Judiciary Sentencing Guidelines are silent on the path to take in manslaughter instances. Currently, the said guidelines are being reworked with a view to having them anchored in law. In the case of *VMK*



– *vs R* (E2015) eKLR ten years imprisonment was given for manslaughter. When a dangerous weapon is used in the commission of the crime, courts are more likely to sentence the offender to life in prison. However, the circumstances of each case must be taken into consideration. For instance, in the case of *Republic -vs- Daniel Okello Rapuch* (2017) eKLR a sentence of twelve months’ imprisonment was meted out on a man who killed another on allegation of being involved in an illicit love affair with his girlfriend. The facts in the present case are that the accused enticed his father away from home and then killed him and stashed his body near river Chwele and that he later led his siblings to where the body was found. The body had multiple cuts on the head and that the cause of death was found to be due to excessive bleeding. The circumstances revealed the accused as a person who is a danger to the society due to his conduct in killing his father and dumping his remains near a river without a care in the world. Family members and the community are apprehensive of the accused who is known to be a violent and dangerous individual. I find custodial rehabilitation to be suitable in the circumstances.

11. The accused has sought for leniency regarding the incident. The Court of Appeal in *Charo Ngumbao Gugudu -vs- Republic* (2011) eKLR held as follows:-

“Further the law is that sentence imposed on an accused person must be commensurate in the moral blame worthiness of the offender and that it is thus not proper exercise for the court to fall to look at the facts and circumstances of the case in their entirety before setting for any given sentence – See *Ambani -vs- Republic* (1990) eKLR.”

12. From the postmortem report produced as an exhibit, the injuries inflicted on the deceased comprised of several cuts on the head which extended to the skull. The opinion of the pathologist is that the cause of death was excessive (massive) bleeding from multiple cut wounds. Had the accused opted to use other channels of redress, the deceased could be alive today. The accused seemed to have decided to get rid of his father after having a disagreement over a piece of land. The accused thus took the law into his hands.

13. The accused has been in custody since the time of his arrest to date. Learned counsel for the prosecution has urged the court for a custodial rehabilitation for the accused. Indeed, the circumstance of the offence together with the accused’s family background warrants a custodial rehabilitation for the accused herein. He will surely benefit from the same despite the fact that he is still a young man with a full life ahead of him. The custodial rehabilitation will help to mould him into a better person before being released back to the society.

14. In view of the foregoing observations, I order the accused herein Titus Wakhisi Makokha to serve imprisonment for a period of fifteen (15) years’ imprisonment which shall commence from the date of his arrest namely 6.6.2023.

**DATED AND DELIVERED AT BUNGOMA THIS 17<sup>TH</sup> DAY OF MAY 2024.**

**D KEMEI**

**JUDGE**

In the Presence of:-

Titus Wakhisi Accused

Wekesa for Masiga for Accused

Miss Kibet for Prosecution

Kizito Court Assistant

