



**Republic v Walumoli & 2 others (Criminal Case E016 of 2021)  
[2024] KEHC 5371 (KLR) (17 May 2024) (Sentence)**

Neutral citation: [2024] KEHC 5371 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL CASE E016 OF 2021**

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

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**ANDREW MASINDE WALUMOLI ..... 1<sup>ST</sup> ACCUSED**

**SAMUEL MUNGASA WANJALA ALIAS SAMMY CHEPKUBE ..... 2<sup>ND</sup> ACCUSED**

**ZACHARIA MAKHAKARA ..... 3<sup>RD</sup> ACCUSED**

**SENTENCE**

1. The three accused herein Andrew Masinde Walumoli, Samuel Mungasa Wanjala alias Sammy Chepkube and Zachariah Makhakara have 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 19.4.2024, all accused persons were found guilty and convicted accordingly.
2. During the sentence hearing conducted on 8.5.2024, Mr. Nabibia counsel for the 1<sup>st</sup> accused submitted that the 1<sup>st</sup> accused is remorseful and that he has a family which rely on him for support. It was submitted that he is a respectful person in the community which is willing to accept him. Counsel finally sought for a non-custodial sentence.
3. Miss Lunani for 2<sup>nd</sup> and 3<sup>rd</sup> accused persons submitted that as regards the 2<sup>nd</sup> accused, he is remorseful and a first offender who has a family that relied on him for support and that the community is willing to accept him back. As regards the 3<sup>rd</sup> accused, it was submitted that he is a remorseful and prays for leniency and further that he has two wives and several children who rely on him for support. Learned counsel sought for a non- custodial sentence.
4. Miss Kibet for the prosecution submitted that life was lost. She submitted that even though the deceased was then battling alcoholism, he did not deserve to die. She sought for custodial sentence.



5. A Pre-sentence report was duly filed by the County Probation officer Bungoma. the same is dated 29/4/2024. The same has given a comprehensive view of the community as well as families of the victim and accused persons.
6. The pre-sentence report indicates that all the three accused persons still deny the offence and maintain their innocence. It also indicates that none of the accused have any criminal record in the community and that the local administration have no problem with them and that they enjoy community acceptance. The report finally indicates that the families of accused persons have not reached out to the family of the deceased.
7. I have considered the oral submissions by learned counsels and the pre- sentence reports. 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 Republic* ( 2017) eKLR, the mandatory nature of death sentence was declared unconstitutional and that courts should receive mitigating circumstances from offenders before imposing an appropriate sentence thereafter. The court could still impose a sentence of death if the circumstances warrant it.
8. The circumstances leading to the death of the deceased are rather tragic. The deceased who was clearly inebriated had left a certain bar only to be attacked by the accused persons herein. The deceased was later escorted to his home where he remained until early in the morning when he passed on from the injuries sustained. The autopsy on the body was conducted by Dr. Reuben Nyongesa Kere (PWII) who noted injuries on the intestines which were perforated and who formed the opinion that the cause of death was severe hemorrhage secondary to multiple duodenum /ileum perforation due to blunt physical injury. It transpired from the evidence that the deceased had been violently kicked on the stomach and hence the said injuries. Hence, the deceased died a painful death. The accused persons were aware that the deceased was an alcoholic and who had earlier caused disturbances at the bar before being thrown out by the bar tender. The accused should have let the deceased be as they were heading to their respective homes. Had the accused persons restrained themselves or resorted to other channels of redress (if any) such as involving the area clan elder or chief, the deceased would be alive today. The accused persons took the law into their hands. It is instructive that the autopsy report ruled out alcohol as the cause of death and hence the deceased, being an alcoholic did not die over the same. The pre – sentence reports appear to be in favour of a non – custodial sentence owing to the fact that all accused enjoy community acceptance. That could very well be the position but for the fact that the accused persons still maintain their innocence and deny committing the offence yet they have already been found guilty and convicted accordingly. This puts their being placed on a non- custodial sentence in doubt. Indeed, the accused persons are entitled to exercise their right of appeal to the Court of Appeal against the conviction and the sentence to be imposed herein . The conduct of the accused persons is rather ambivalent since on the on hand, they plead for a non-custodial sentence while on the other hand, they do not take responsibility and still maintains their innocence despite having been found guilty by this court. I find in the circumstances, the accused persons merit a certain period of custodial rehabilitation before proceeding to serve another duration of non-custodial sentence.
9. Regarding the sentence to be imposed, it is trite that the sentence imposed on an offender must be commensurate with the oral blameworthiness of the offender and that the court must look at the facts and circumstances of the case in their entirety. It is noted that the 2<sup>nd</sup> accused person has been in custody from the date of arrest while the rest remained in custody for some period before posting bail. This period will be taken into consideration pursuant to the provisions of section 333(2) of the *Criminal Procedure Code*.



10. In view of the foregoing observations, i order each of the accused persons herein Andrew Masinde Walumoli, Samuel Mungasa Wanjala alias Sammy Chepkube and Zacharia Makhakara to serve (1) year imprisonment from date of conviction ( 19.4.2024) and thereafter to be placed under probation for a period of three (3) years.

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

**D KEMEI**

**JUDGE**

In the presnce of :-

Andrew Masinde Walumoli 1<sup>st</sup> Accused

Samuel Mungasa Wanjala 2<sup>nd</sup> Accused

Zacharia Makhakara 3<sup>rd</sup> Accused

Wekesa for Masengeli for 1<sup>st</sup> accused

Wekesa for Lunani for 2<sup>nd</sup> accused

Wekesa for HP Wamalwa for 3<sup>rd</sup> accused

Miss Kibet for prosecution

Kizito Court Assistants

