



**Republic v Malemba & 3 others (Criminal Case 14 of 2010)
[2024] KEHC 8306 (KLR) (21 June 2024) (Sentence)**

Neutral citation: [2024] KEHC 8306 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE 14 OF 2010**

REA OUGO, J

JUNE 21, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

RAMADHAN MUSA MALEMBA 1ST APPELLANT

EDWIN WANJALA 2ND APPELLANT

ABDULKADIR MIKA NATEMBEA 3RD APPELLANT

FERNANDES JUMA MALABA 4TH APPELLANT

SENTENCE

1. In a judgment dated 9.2.2024 the Court of Appeal sitting in Kisumu dismissed the appellant’s appeal on conviction for the offence of murder. The Court of Appeal allowed their appeal on sentence and set aside the death sentence.
2. The file has been returned back to the High Court for resentencing. The resentencing hearing is for Ramadhan Musa Malemba 1st appellant, Abdulkadir Mika Natembea and 3rd appellant and Fernandes Juma Malaba. The 2nd appellant Edwin Wanjala was acquitted by the Court of Appeal.
3. The 1st, 3rd & 4th appellants were charged before the High Court Bungoma on the 23.7.2010 and sentenced on the 13.10.2017. They were in remand custody from 2010 to 2017.
4. Their appeal was heard by the Court of Appeal and a judgment was delivered on 9.2.2024. They have served about 7 years of imprisonment.
5. In considering resentencing I have considered the mitigation raised by the appellants, the fact led by the prosecution that lead to the conviction, the period spent in remand and jail, and the Respondent’s submissions. The Respondent has requested the court to consider the aggravating and mitigation



factors and also to consider that a life was lost due to the appellants' actions. The offense was aggravated. It was a gruesome murder. The Respondent has asked that the court give a deterrent sentence.

6. The 1st appellant relied on his written mitigation. He states he was arrested when he was 33 years and he has spent 15 years in prison and is now 48 years. He has children 3 girls who depend on him. He is the sole breadwinner. His children dropped out of school due to poverty and lack of proper parental care. He is a 1st offender and is remorseful and he made a wrong decision arresting the deceased using members of the public. He has 2 wives who are just housewives. He is the sole breadwinner. His 2nd wife is sickly and he is also sickly he has high blood pressure and his father is ailing. He has a high chance of losing all he bought. He related well with the prison administration and fellow inmates. He seeks a 2nd chance to reunite with society and to allow him to reconcile back to other parties. Whilst in prison he has gone spiritual skills in the Ummah Foundation and is now an Imam of Islam and has become a good crusader of good morals and he is readopted to the community. He seeks to be sentenced for the period already served in prison (*Sabastian Okweru Murefu vs Republic* Pet No. 151 of 2012).
7. The 3rd appellant filed written submissions. I have read and considered them. He seeks a definite sentence. He has been in custody for the last 15 years and he regrets his actions and apologizes to the family. He has learned the significance of breaking the law. He had no past criminal record. He will not pose a danger to society if released. Reference made on the case of *Francis Opondo vs Republic* (2017) eKLR.
8. The 4th appellant in his written submissions states he is now 55 years. Whilst in prison he has undergone several spiritual trainings and obtained various diplomas.
9. I have considered the guidelines on sentencing, the mitigation raised by each appellant and the Respondent's submissions, and the period each appellant has spent in remand and prison which totals 15 years. A man lost a life in a most gruesome way having his private parts cut and beaten thoroughly, he died as a result of his genital mutilation and severe beating. The 1st, 3rd, and 4th appellant indicate they are remorseful but their actions are despicable, inhuman, and unwarranted. In my view, they each deserve a jail term.
10. Having taken the period spent in prison I sentence each accused person to serve 30 years imprisonment. The remand period and period served of about 14 or more years shall be considered when computing the sentence. Each appellant has a right of appeal within 14 days.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT BUNGOMA THIS 21ST DAY OF JUNE 2024 DAY

R.OUGO

JUDGE

