



**Republic v Mwachari (Criminal Case 3 of 2019)
[2024] KEHC 9960 (KLR) (25 July 2024) (Sentence)**

Neutral citation: [2024] KEHC 9960 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE 3 OF 2019**

**GMA DULU, J
JULY 25, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

PAUL MWALENGA MWACHARI ACCUSED

SENTENCE

1. The accused person herein Paul Mwalenga Mwachari stands convicted of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars of offence are that on 20th March 2019 at Lukasini village in Tausa Location within Voi Sub County of Taita Taveta County beat up and burnt Othiniel Mwachari Andrew who suffered severe injuries resulting in his death.
2. He was convicted on 21st November 2023, but it took until the end of June 2024 for the victim impact report to be filed in court, the pre-sentence report having been filed earlier in January 2024.
3. In addition to the reports filed, Mrs. Isika learned defence counsel, for the accused person orally submitted in mitigation, that the accused was a family man with a wife and children and a businessman. He was also in custody now for five (5) years and counsel requested for leniency and urged that the period he was in custody during trial be taken into account in sentencing him.
4. Mr. Sirima learned Prosecuting Counsel for the State on his part, submitted that the State relied on the pre-sentence report, and victim impact report, as well as the Sentencing Guidelines. Counsel emphasized that the deceased was 80 years old, and a relative of the accused person, and an old and thus vulnerable person having been born during 2nd World War.
5. Prosecuting Counsel also submitted that great violence was used in the killing, merely on an allegation that the deceased was a wizard. Counsel stated further that these were aggravating circumstances, and that a sentence of forty (40) years imprisonment would be appropriate, as the written reports filed show that the accused person was not remorseful.



6. I have considered the mitigation and aggravating factors highlighted to me. I have also perused and considered the victim impact report, and pre-sentence report. The accused person is 43 years old, but the deceased though old, was a family man with a wife and children who are still alive. The wife depended on him. She has lost the breadwinner.
7. The accused person also caused the deceased person to suffer a painful death through burning, and for an allegation of witchcraft practice on which there is no shred of any evidence to demonstrate acts of the deceased which could make him believe that the deceased was a sorcerer or practiced witchcraft.
8. The statutory mandatory sentence for murder is death. However, recent jurisprudence from the Supreme Court of Kenya has held that a lesser sentence can be imposed.
9. Taking into account both the mitigating and aggravating factors above, I am of the view that non custodial sentence is not appropriate.
10. The suggested sentence by the Director of Public Prosecution of 40 years imprisonment is also, in my view, on the higher side, as he has been in custody during trial.
11. I sentence the accused person herein to thirty (30) years imprisonment from 1st April 2019 when he first appeared in this court. Right of appeal within 14 days explained.

DATED, SIGNED AND DELIVERED THIS 25TH DAY OF JULY 2024 VIRTUALLY AT VOI.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Sirima for the State

Mr. Mutinda holding brief for Mrs. Isika for the accused

Accused – present

