



**Republic v Njulu & 4 others (Criminal Case 5 of 2018)
[2024] KEHC 9962 (KLR) (25 July 2024) (Sentence)**

Neutral citation: [2024] KEHC 9962 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL CASE 5 OF 2018
GMA DULU, J
JULY 25, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

NJULU MWAKIO NJULU 1ST ACCUSED

ANOLD MWANGACHE 2ND ACCUSED

GIDEON MENZA 3RD ACCUSED

DELIUS MCHARO 4TH ACCUSED

BERNARD ROVAL MWABILI MAIGHACHO 5TH ACCUSED

SENTENCE

1. The five (5) accused persons herein Njulu Mwakio Njulu, Anold Mwangache, Gideon Menza, Delius Mcharo and Bernard Roval Mwabili Maighacho, stand convicted of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. The particulars of the offence are that on 11th July 2018 at Kese Shopping Centre in Werugha Sub Location within Wundanyi Sub County in Taita Taveta County jointly murdered Delilah Wawuda Jumwa.
3. After their conviction, this court received pre-sentence reports filed by the Probation Officer on each of the five (5) accused persons, as well as a victim impact report.
4. In submissions in mitigation, Mr. Sirima learned Prosecuting Counsel for the State relied on the Sentencing Guidelines 2016 and stated that the deceased was an elderly person of 59 years and thus a vulnerable person, and that there were aggravating circumstances such as assaulting and burning this defenceless woman, and stripping her naked.



5. Counsel submitted that the assault lasted for more than one hour, and was done by a gang with a common intention, with prior planning and urged this court to impose the death sentence or imprisonment for not less than 45 years, and relied on the victim impact report.
6. Mr. Mosioma learned counsel for 1st, 2nd, 3rd and 4th accused persons submitted that all murders are inhuman, and that the social impact report filed herein showed that the incident was initiated by a crowd and that all the accused persons were remorseful.
7. Counsel added that, all the accused were young persons with families, that is wife and children. That 1st, 2nd and 3rd accused persons were in custody since 2018. Counsel also asked the court to consider that the accused persons voluntarily surrendered to the police, and the pre-sentence reports were to the effect that this court should use its own discretion in sentencing, and asked for non-custodial sentence; as the accused persons were not a danger to society.
8. Mrs. Isika learned counsel for the 5th accused person, in mitigation, submitted that her client was a first offender and aged 28 years. That he had been in custody for 5 years now and that prison sentence would amount to cutting his life short.
9. Counsel further submitted that the death herein was caused by mob psychology, and that there were many out there who were involved, and urged for this court to impose non-custodial sentence for the accused persons, so as to be ambassadors of good conduct in society.
10. I have considered the mitigating and aggravating factors herein. In my view, the deceased suffered a painful, humiliating and shameful death by being assaulted by a number of people, being set on fire, and being stripped naked. She was a helpless and defenceless old woman.
11. On the other hand, the accused persons are young people, they were also in a group with others when the incident occurred. They however had the opportunity and freedom to keep themselves out of the criminal activities.
12. In my view, a non custodial sentence is not appropriate for such an act of causing such a painful death to a defenceless old woman. The statutory sentence is death.
13. Taking into account the mitigation factors and aggravating factors and the contents of the pre-sentence reports, and being aware that 4th accused person was out on bail during trial, I sentence each of the five accused persons herein to twenty (20) years imprisonment from today's date. Right of appeal within 14 days explained.

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

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Sirima for the State

Mr. Mosioma for 1st, 2nd, 3rd and 4th accused

Mr. Mutinda holding brief for Mrs. Isika for 5th accused

All five (5) accused present

