



**Republic (ODPP) v Wooni & another (Criminal Case 64 of 2013)
[2023] KEHC 19407 (KLR) (26 June 2023) (Directions)**

Neutral citation: [2023] KEHC 19407 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 64 OF 2013
PJO OTIENO, J
JUNE 26, 2023**

BETWEEN

REPUBLIC (ODPP) PROSECUTOR

AND

JULIUS WOONI 1ST ACCUSED

MULUNDA NDUYI 2ND ACCUSED

DIRECTIONS

1. After the entire case was heard, accused convicted and a presentence report called for and when only mitigation was pending before the passage of sentence, a group of persons identified themselves as the family of the accused and that of the deceased attended court and sought to address the court.
2. When given the opportunity to address the court both sides pleaded with the court to forebear sentencing the accused and allow the parties to have the matter settled at home using the traditional customs and mechanism in place.
3. The Court appreciates the approach by the two families to underscore how well rooted the practice of alternative dispute resolution is becoming. It is now appreciated that the court reserves no monopoly over dispute resolution and further that parties are the best custodians of their respective rights and interests. Many a times the disputes deserve to be resolved on the basis of interests rather than rights.
4. The Kenyan Judiciary with the mandate under article 159(2) to promote alternative dispute resolution has developed the Judiciary Alternative justice systems Policy Baseline. The Baseline pivots Alternative Justice System upon article 159(3) and underscores some of its benefits over litigation to be; the affirmation of people sovereign power, reduction of adversity in dispute resolution, shun for formalities; affordability to parties; restoration as an end of justice; social inclusion as an everyday way in dispute resolution and the final nature of the awards/resolutions.



5. In this matter a Judgment by the Court has determine that the accused did murder the deceased. That may be challenged and it will take more time before the matter is rested. When the court imposes its sentence, it would strive to impose a sentence that meets the objects of criminal justice system and may impose a sentence that serve the global good in the eyes of the law with not so much attention and regard to the persons directly affected by the crime.
6. However, that determination on the appropriate sentence may not be of direct benefit and impact on the to the other human beings who are directly affected by the crime. The court has in mind the husband and parents of the deceased as well as the immediate family of the accused.
7. More importantly is the fact that the final determination of the case by imposition of sentence may not be an everlasting resolution of the underlying causes of the initial dispute. It may also not have any contribution toward reparation of family ties between the family.
8. It is for that reason that the Court considers the dispute to initially belong to the individuals directly affected by the case; the husband and family of the deceased and the family of the accused. They have an existing relationship as neighbours and clan relatives that deserve efforts towards restoration. The starting point must be to allow them to have a consensus on how best to have and continue relating. At this level, I will arrest the decision of the Court on sentence and give to the parties/the families a period of ten (10) days, from today, to engage and decide a mutually beneficial approach to resolving their dispute. In doing so, the court recognizes that the judicial power the court exercises belongs to the citizen. Even the prosecutorial powers exercised by the director of public prosecution are equally delegated by the people who reserve the right to exercise same directly by deciding to prosecute or forebear prosecution
9. Having arrested the sentence, the matter is adjourned and stood over to be mentioned on July 5, 2023 when the parties shall present to court a written report on the outcome of the alternative dispute resolution process.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 26TH DAY OF JUNE 2023.

PATRICK J. O. OTIENO

JUDGE

In the presence of:-

Ms. Chala for the Prosecution/State

Ms. Andia for the Accused

Court Assistant: Polycap

