



**Republic v Wanyonyi (Criminal Case 37 of 2020)
[2023] KEHC 22145 (KLR) (12 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22145 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE 37 OF 2020**

**DK KEMEL, J
SEPTEMBER 12, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

BILL BRIGHT WANYONYI ACCUSED

RULING

1. The accused herein Bill Bright Wanyonyi has been charged with an offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). The accused has since been found guilty of the offence aforesaid vide the judgment of this court dated 30/6/2023.
2. During the sentence hearing conducted on the 28/7/2023, Mr. Wamalwa Robert, learned counsel for the accused, presented mitigation on behalf of the accused herein. It was submitted that the accused is remorseful and that he is the eldest son in his family and that both his parents passed on while he was in custody. Counsel pointed out that there is nobody at home to provide for his siblings. It was submitted that the accused has reformed while in custody. Counsel prayed for a non-custodial sentence and that the court to consider the fact that the accused's siblings have since dropped out of school and further that their family land has been invaded by neighbours. It was finally urged that this court do exercise mercy upon the accused just like Jesus did for mankind.
3. Mr. Ayekha for the prosecution submitted that the court should note that life was lost and that the victim was found with an axe embedded on the head. It was submitted that a severe sentence be imposed in order to deter the offence within the community.
4. This court called for a pre-sentence report. The same is dated 20/07/2023 and indicates that the accused and the deceased were rivals over a certain lady in the area and that the deceased had snatched the girl from the accused and which angered him to the point of planning to attack him. The report further indicates that the accused is remorseful over the offence. The report also indicates that the home



environment is not conducive for the accused's immediate resettlement as there are no social structures to support community based rehabilitation. The probation officer while penning off her report has proposed that the accused be placed under probation for a period of three years with the first year being placed at a probation hostel, as mechanisms for reconciliation between the victim's family and that of the offender are put in place.

5. I have given due consideration to the submissions by the learned counsels as well as the pre-sentence report. 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 and Two Others vs R* (2017) eKLR, the mandatory nature of death sentence was declared as unconstitutional and that courts shall be at liberty to receive mitigating circumstances from the offender before passing the appropriate sentences thereafter. It is noted that the circumstances leading to the death of the deceased are rather tragic. It transpired that both the accused and deceased had love designs over a certain lady in the area and that the said lady appeared to have switched her love to the deceased and which angered the accused herein and who plotted to eliminate the deceased. The gravity of the injuries sustained by the deceased left no doubt that the accused really wanted the deceased out of the love equation. The deceased upon being hit with a small axe by the accused fell down and subsequently passed on. The witnesses at the scene found the small axe embedded on the head of the deceased and was only removed by the pathologists during the autopsy. I find that had the accused opted for other avenues for redress, if he felt offended by the deceased snatching his girlfriend, the deceased would be alive today. The accused ought to have moved on with his life even after being dumped by his lover but not to seek revenge against his rival. It is clear that the deceased died from that single blow to the head which is an indication that the accused wanted the deceased to die so as to get rid of competition to the subject of their love rivalry. The deceased then aged about 18 years old and who had a full life ahead of him, died a painful death. This was not necessary thanks to the ungovernable anger and malevolent design of the accused.
6. Mr. Wamalwa Robert for the accused has sought for leniency for the accused and urges this court to grant him a non-custodial sentence. The court of Appeal in the case of *Charo Ngumbao Gugudu vs R* (2011) eKLR held as follows;

“Further, the law is that sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that it is thus not proper exercise for the court to fail to look at the facts and circumstances of the case in their entirety before settling for any given sentence. See *Ambani vs. R* (1990) eKLR.”
7. From the post mortem report produced herein by the pathologist Dr. Vilembwa (PW1) most of the injuries were inflicted on the head namely a split fractal parietal skull bone leading to cerebral hemorrhage. The cause of death was cardiopulmonary arrest due to brain injury as a result of assault. It seems the single blow to the head led to his death. Indeed, the photographs produced as exhibits showed the assault weapon (small axe) still embedded onto the head of the deceased.
8. The pre-sentence report indicates that the home environment is desperate and not conducive for the offender's immediate resettlement since there are no social structures to support community based rehabilitation. In the same breath, the probation officer while penning off her report recommended for a probation order. I find this to be a contradiction of some sorts in that as long as the home environment is not conducive for community rehabilitation, an order for probation will not suffice as the purpose will not be achieved. Consequently, i decline the suggestion for a probation order in the circumstances.
9. It is noted that the accused has been in custody since the time of his arrest to date. I find that the circumstances of the case as well as the pre-sentence report calls for a custodial rehabilitation for the



accused herein. The accused is an adult currently, he will benefit from the custodial rehabilitation despite the fact that he is still a young man with a full life ahead of him. The custodial rehabilitation will help to mould him into a better person before being released back to the society.

10. In the result, I order the accused herein Bill Bright Wanyonyi to serve a period of ten (10) years' imprisonment which shall commence from the date of arrest namely 10/08/2020.

DATED AND DELIVERED AT BUNGOMA THIS 12TH DAY OF SEPTEMBER 2023.

D.KEMEI

JUDGE

In presence of

Bill Bright Wanyonyi Accused

Wamalwa R For Accused

Miss Mwaniki for Prosecution

