



**Republic v ENW (Murder Case 38 of 2020)
[2023] KEHC 22140 (KLR) (11 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22140 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
MURDER CASE 38 OF 2020
DK KEMEL, J
SEPTEMBER 11, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

ENW ACCUSED

RULING

1. The accused herein ENW has been charged with an offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. *Vide* a judgment dated June 30, 2023, the accused was found guilty and convicted accordingly therefor.
2. During the sentence hearing conducted on July 28, 2023, Mr Makokha for the accused presented mitigation on her behalf. He submitted that the deceased herein was the aggressor leading to the incident. He submitted that the accused suffers from mental illness which is currently being addressed. It was submitted that she has three children who are currently staying with relatives. It was finally submitted that the accused is remorseful and had acted in self defence.
3. Mr Ayekha for the prosecution submitted that an appropriate sentence should be imposed since a life was lost.
4. A pre-sentence report was called for. The same is dated July 20, 2023 and it indicates that her in laws are not willing to take her back as they already destroyed her marital home after the incident and further that the accused’s mother does not have the capacity to take care of her. The report also indicates that the accused and deceased had a tumultuous life laced with frequent fights and that the deceased was established to have been the aggressor in the incident. The report finally recommends for a custodial rehabilitation so as to enable the accused get the necessary medical attention as she is schizophrenic and also to shield her from reprisal by the victim’s family.



5. I have given the consideration to the sentiments of learned counsels for defence and prosecution 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 Supreme Court’s decision in *Francis Karioko Muruatetu & 2 Others Vs R* {2017} eKLR, the mandatory nature of death sentence was found to be unconstitutional and that courts should receive mitigating circumstances from the offender before imposing appropriate sentences thereafter.

The circumstances leading to the death of the deceased appear rather tragic since the domestic dispute degenerated into an offence of murder. It kicked off from a disagreement over failure to tend to the family’s cows wherein the deceased hit her with a metal rod and in retaliation the accused hit him on the head with a huge piece of stick. Upon the demise of the deceased, the accused dragged the body and placed it in the house and fled to her parents’ home. Had the accused rushed to the village elder (Mukasa) for intervention, the deceased would still be alive today. It is clear that the accused had got tired of the frequent beatings from the deceased and decided that enough was enough and snuffed out the life of her husband. It is noted that the deceased died from the single blow to the head.

6. Both learned counsels for defence and prosecution as well as the probation officer appear to agree that a reasonable custodial rehabilitation is suitable for the accused herein. 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, the injuries sustained by the deceased comprised of swollen left parietal side of the head, blood oozing from the ear and nose, blood clot on the brain substances. The pathologist formed the opinion that the cause of death was severe head injury secondary to blunt trauma to the head. It seems the single blow to the head led to the death of the deceased. It is instructive that the accused upon seeing that the deceased had died dragged the body to the room and placed it on the floor next to the bed and then secured the door from inside and then she left through the window. The accused made it appear to the neighbors that nothing was amiss. Hence, the accused’s claim that the deceased had fallen from the bed and injured himself fell flat on its face when her youngest son EK (PW1) confirmed that it was the accused who hit the deceased with a huge stick. The injuries indicated on the post-mortem report shows that the force used was quite strong as the huge piece of piece of stick smashed the skull of the deceased. This was a clear indication that the accused wanted to finish off the deceased.
8. It is noted that the accused has been in custody since the time of her arrest to date. The circumstances of the case as well as the pre-sentence report calls for a custodial rehabilitation for the accused herein. She will benefit therefrom in addition to her health condition being taken care of. The custodial rehabilitation will help mould her into a better person before being released back to the society.
9. In the result, i order the accused herein ENW to serve a period of ten (10) years imprisonment which shall commence from the date of arrest namely August 9, 2020.

DATED AND DELIVERED AT BUNGOMA THIS 11TH DAY OF SEPTEMBER, 2023.

D.KEMEI

JUDGE

In presence of



ENW Accused

Sichangi for Makokha For Accused

Miss Mwaniki for Prosecution

Kizito Court Assistant

