



**Republic v Wanyonyi (Criminal Case E038 of 2021)
[2023] KEHC 22141 (KLR) (11 September 2023) (Sentence)**

Neutral citation: [2023] KEHC 22141 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E038 OF 2021**

DK KEMEL, J

SEPTEMBER 11, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

MOSES BARASA WANYONYI ACCUSED

SENTENCE

1. Moses Barasa Wanyonyi 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 30/06/2023, the accused herein was found guilty of the offence and convicted accordingly.
2. During the sentence hearing conducted on the 28/7/2023, Mr. Sichangi, learned counsel for the defence, presented mitigation on behalf of the accused herein. It was submitted that the accused is the sole breadwinner for his five children and wife. It was further submitted that the accused is quite remorseful over the offence and that there is no likelihood of reprisals if a non-custodial sentence is imposed. It was submitted that the offence took place in a drinking scenario. Learned counsel urged the court to put him on a non-custodial sentence as he is not going to be a danger to the society.
3. Mr. Ayekha, learned counsel for the prosecution submitted that the court should consider the circumstances leading to the death of the deceased. It was submitted that the deceased was lured out of a certain hotel and assaulted in broad daylight. Learned counsel urged for a stiffer sentence geared towards a proper rehabilitation.
4. This court called for a pre-sentence report. The same is dated July 20, 2023. The same indicates that the accused has a known history of violent behavior and that his confrontational nature while under the influence of alcohol is a concern to the community and that they feel that the accused who ended the life of the deceased should be kept away. The report further indicated that the accused is remorseful and regrets the role he played in the events leading to the demise of the deceased.



5. I have given due consideration to the mitigation by learned counsel for the accused as well as the sentiments of learned counsel for the prosecution. I have also considered the pre-sentence report. It is noted that the punishment for murder is a sentence of death under section 204 of the *Penal Code*. However, following the decision of the Supreme Court in *Francis Karioko Muruatetu and 2 others vs R* (2017) eKLR, the mandatory nature of death sentence was found to be unconstitutional and that courts should receive the circumstances from the offender before imposing an appropriate sentence thereafter. The circumstances leading to the death of the deceased are rather tragic in that the accused herein stormed a certain hotel wherein the deceased was and he together with his companions dragged the deceased out of the hotel and viciously assaulted him in broad daylight and later left him for dead. It transpired from the evidence and the pre-sentence report that the assailant had a bone to pick with the deceased and thus attacked him. Had the accused opted for other avenues for redress if he felt offended by the deceased then the said deceased would be alive today. It is clear that this was out of some sort of revenge on the part of the accused herein as he is reported to have entered a hotel where deceased was and dragged him outside and then assaulted him at the roadside in broad daylight. The post mortem report indicated the cause of death as severe anaemia secondary to intra-abdominal and intracranial hemorrhage due to blunt trauma plus sharp objects. The eyewitnesses had testified that the accused and his companions viciously kicked the deceased on the stomach and head while wearing boots and further using a club. It is noted that the deceased died from the said injuries. The deceased was then aged about 30 years and had a full life ahead of him. His life was cut short thanks to the actions of the accused herein.
6. It has been submitted by the learned counsel for the accused that this court does exercise some leniency on the accused regarding the incident. The Court of Appeal in *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 as exhibit 1, the injuries inflicted on the deceased comprised of multiple bruises on the chest, stomach and back of the head and that on the internal examination, there were ruptured vessels in the stomach plus pools of blood in the stomach and in the brain. The cause of death was established to be severe anaemia due to intra-abdominal and intra-cranial hemorrhage caused by a blunt and sharp object. It seems that the vicious assault on the stomach and head of the deceased led to his death. As the accused only targeted the deceased over unknown reasons, i find that had the sought interventions firm other quarters such as the clan elder or chief to resolve the alleged dispute, the deceased would probably be alive today. The injuries sustained by the deceased is clear evidence that the accused intended to finish off the deceased.
8. It is noted that the accused had been in custody throughout his trial. The circumstances of the case and the pre-sentence report calls for a custodial rehabilitation. The said report indicated that the accused has a violent character within the community and it appears that the community members live in fear of the accused who has been nicknamed “Poliko” in the area. This explains why none of the members of public dared to intervene when he was viciously assaulting the deceased. It is in structure that the accused just entered the hotel where the deceased was and then yanked him outside and proceeded to assault him without any of those present at the hotel or outside coming to the aid of the deceased. It is thus clear that the accused was well known for his atrocities and that nobody dared cross his path. No wonder then that he could just pick his victim out of a hotel and proceed to attack him in broad



daylight without any care in the world. I find that custodial rehabilitation would be suitable to the accused herein and that the same will help to mould him into a better person before being released back to the society.

9. In the result, i order the accused herein Moses Barasa Wanyonyi to serve twenty-five (25) years imprisonment which shall commence from the date the arrest namely, October 25, 2021.

Orders accordingly;

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

D.Kemei

Judge

In presence of;

Moses Barasa Wanyonyi Accused

Sichangi For Accused

Miss Mwaniki for Prosecution

Kizito Court Assistant

