



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Wekesa (Criminal Case E023 of 2021)
[2023] KEHC 22144 (KLR) (11 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22144 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E023 OF 2021**

DK KEMEL, J

SEPTEMBER 11, 2023

BETWEEN

REPUBLIC PROSECUTION

AND

ESAU MASINDE WEKESA ACCUSED

RULING

1. The accused herein Esau Masinde Wekesa was charged with the 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 of the said offence and accordingly convicted therefor.
2. Drawing the sentence hearing conducted on July 28, 2023, Mr Wanjala for the accused relied on the pre-sentence report and urged the court for leniency hearing in mind that the stigma over the death of the deceased will be with the accused for the rest of his life.
3. Mr Ayekha for the prosecution vouched for a custodial sentence since the accused killed his father over a domestic dispute. He pointed out that there is still anger in the family and that the environment is not receptive to him in the village.
4. A pre-sentence report was filed by the County Probation Officer Bungoma. It is dated July 20, 2023 and indicates that the home situation remains unwelcoming for his immediate release on community based sanctions due to non-commitment by his family members to get involved in community rehabilitation. The report further revealed that the accused is a temperamental and violent man especially when under influence of alcohol and drugs. The local administration and clan elder is of the view that a custodial rehabilitation is the best option for the accused as the home environment is still hostile for his immediate re-entry. The report finally indicated that custodial rehabilitation would have to deter recidivism and deter the accused from undesirable peers.



5. I have given due consideration to the sentiments of learned counsels for the 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 decision of the Supreme Court in *Francis Karioko Muruatetu & 2 Others Vs R* {2017} Eklr, the mandatory nature of death sentence was declared unconstitutional and that courts should receive mitigating circumstances from the offender before imposing an appropriate sentence thereafter.
6. The circumstance leading to the death of the deceased are rather tragic. It kicked off from a disagreement between the accused and the deceased over a sum of kshs 50,000/= being part of some proceeds of sale of family land in which the accused had requested from the deceased with which to use to purchase a motor cycle. It seems the deceased was reluctant in giving the accused the money demanded whereupon the accused killed the deceased and thereafter attempted to set the body ablaze. The autopsy report confirmed the cause of death as hemorrhagic shock due to deep cut wound. The injuries inflated on the body of the deceased as indicated on the autopsy report is a clear indication that the accused wanted his father to die. The deceased then aged 63 years died a painful death. The accused's ungovernable anger led to this state of affairs. The refusal by the deceased to give him the promised Ksh 50,000/= did not warrant him to eliminate his own father yet there were other avenues of redress such as the village headman(Mukasa) or the local administration. I find that the killing of the deceased was thus unwarranted in the circumstances. The accused being the last born child of his parents was expected to protect and take care of them especially in old age but he turned out to be a danger and a monster to them.
7. Defence counsel has sought for a lenient sentence for the accused over 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 ethnicity before setting for any given sentence see *Ambani vs R* {1990} eKLR.”

From the post mortem report produced as exhibit, there are several severe injuries on the body of the deceased which comprised of deep out wounds and fractures on right arm, temporal and parietal region of the head. It seems the multiple cuts with the panga on the body of the deceased led to his death. The accused's anger at being denied access to Kshs 50,000/= was out of proportions. Had the accused resorted to other channels for redress, the deceased would be alive today. It beats logic as to why the accused could kill his own father just because he was denied access to a sum of Kshs 50,000/= . This was not warranted in the circumstances. The pre-sentence report indicates that the accused requires custodial rehabilitation before being allowed back into the society and that the ground is still hostile towards him. The report further indicates that the accused has a violent streak due to alcohol and drugs abuse and that the family is not ready to get involved in the accused's possible community rehabilitation. The family's view is that the offence herein is never tolerated unless a through cleansing is done prior to his release. The circumstances of the offence herein requires a custodial rehabilitation.
8. It is noted that the accused has been in custody since the time of his arrest to date. This period will be taken into consideration. The custodial rehabilitation will benefit the accused even though he is still a young man with a full life ahead of him. The custodial rehabilitation will help to mould him out into a better person before being released back to the society.
9. In the result, I order the accused herein Esau Masinde Wekesa to serve a sentence of thirty (30) years' imprisonment which shall commence from the date of arrest namely June 12, 2021.



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

D.KEMEI

JUDGE

