



**Prosecutor v Musenjule (Criminal Case E004 of 2023)
[2024] KEHC 16304 (KLR) (11 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 16304 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E004 OF 2023
REA OUGO, J
OCTOBER 11, 2024**

BETWEEN

PROSECUTOR REPUBLIC

AND

JOSEPH WEKESA MUSENJULE ACCUSED

RULING

1. Joseph Wekesa Musenjule, hereinafter referred to as the accused person was initially charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. After a successful plea bargain agreement, the accused person pleaded guilty to the offence of Manslaughter contrary to section 202 as read with section 205 of the Penal Code. The particulars of the offence are; on the 5th day of January 2023 at Kakamwe village, Kakamwe Sub- Location, Kakamwe location in Tongaren Sub-County within Bungoma County unlawfully caused the death of Evalyne Nasimiyu Wekesa.
2. Upon conviction I sought a pre-sentence report on the accused person. The report indicates that the accused person is 77 years old. The deceased was his daughter. He is married and has 12 children. Two children are deceased, the deceased being one of them. The accused was described by both his nuclear and extended family members as an arrogant person who has very little regard for authority right from childhood and he has been intimidating his family since his hey days. According to his family, he has caused them a lot of physical and psychological turmoil eventually causing the death of the family's daughter. That the accused readily admits that he killed the victim who was his daughter because he believed that her husband had introduced her to a cultic church that was out to sacrifice his whole family. The family on the other hand recounted how the accused attacked the victim who had been sedated by the effects of the medication she had taken that morning. He allegedly took advantage of her helplessness and first raped her and proceeded to suffocate her.
3. The report further indicates that the accused is not remorseful at all and that he causally states that he killed the victim to save his larger family from being sacrificed by her. The accused's family is still very



bitter with him considering that the matter involved one of their siblings as a victim. As a result, they have never visited him in prison and his wife is particularly bitter stating that she lives in a dilapidated house the, main having been demolished after the incident. His family feels that the accused has caused them immense harm psychological and they have no face in society. They recommended a stiff penalty for the accused. They are yet to recover from the incident and they are opposed to his admission on a non-custodial sentence. That they do not see their father's usefulness to the family as he is likely to harm their mother if he is allowed back. The family is not ready to receive him back home following the traumatic experience he has caused them

4. The community view according to the area chief is that the community knows him as a violent person who always threatens other members of the community and has little regard for authority. The accused will not be safe if released back into the community as the community is hostile to him following the incident. The probation officer concludes his report by stating that the accused person though 74 years old, he does not exhibit an iota of remorsefulness as he bluntly said he had killed the victim to save his family from being sacrificed. The accused lacks the required family support system that could help him in a rehabilitation journey in the community. The rest of the family are yet to heal and they therefore find him unsuitable for a non-custodial sentence and recommend an alternative sentence.
5. Mr Okaka in mitigation on behalf of the accused stated as follows; the accused is a first offender. He is remorseful and he has been in custody since his arrest. When he was brought to court the mental report indicated that the accused person was not in the required state of mind when the offence was committed and that he was taken to Mathare for treatment and brought back. That is a physical look at the accused person now he looks calm and not violent as indicated in the pre-sentence report. The facts in the plea bargain agreement indicate that the deceased was suffering from mental illness and therefore the two were not in their proper state of mind and that they could not tell what happened at the time of the incident. The accused is of an advanced age of 74 years old and when he got well he pleaded guilty to a lesser charge. He has undergone counselling on the crime at GK prisons and no report that he has been violent. Reliance was made on the case of R vs. Mary Napunyi HCCRC 23 of 2028 [2022] eKLR.
6. I have considered all the above, the pre-sentence report, the accused's mitigation, guidelines on sentencing, and the facts surrounding this case. When the accused was brought for murder he appeared he mentally disturbed. The mental assessment report dated 23/1/2023 indicated as follows; on speech- he was coherent and relevant volume, high pressured speech; thought content- present delusion of religion; perceptual disorder – hallucinations- none, illusions- present, memory -good to remote recent and present, orientation- fair to place and person and not time, concentration-good, judgment- good, abstract- good to a proverb, insight- lacks, he is mentally unstable. The recommendation was that “ the patient (the accused) is mentally unstable, not capable of standing trial”. He was placed on treatment. A subsequent report dated 29.3.2023 indicated that the accused had an abnormal mental status exam consistent with bipolar 1 mood disorder. A report dated 6.1.2024 indicated he was examined and found to be fit to take plea before a court of law. The facts read to this court which the accused admitted as true and is what happened did not indicate that the accused was suffering from mental illness at the time he committed the offence. It is the deceased who was mentally unwell. The accused was found strangling the daughter by a grandson who had returned home. The accused took himself to the police station. The accused confessed to the offence at the police station and he was taken for a mental examination and he was found mentally unfit to take plea. The post-mortem report indicates that the deceased was 45 years old , she had severe cyanosis, defensive bruise wounds and anterolateral aspects of both upper limbs, no limb fractures no strangulation marks on anterior neck. The findings were that the head no injuries on the scalp there was intact cranium and unstable base of skull. The cause of death was cardiopulmonary arrest due to physical injury as a result of a blunt object. Its apparent that the deceased



tried to defend herself. The mental assessment report dated 29.3.2023 indicates on his thought content that the accused is preoccupied with the end time and death. He has delusions of grandiose (believes) he represents God and he is one of God's prophets. He has homicidal thoughts (believes he is justified to kill anyone who does not live according to God's word).

7. In the case cited the accused person was a mental patient unlike the accused in this case. It was not the case of the prosecution that the accused was a mental case at the time he killed his own daughter. No one has the right to take one life even in cases where they do not agree on matters concerning God. The injuries sustained by the deceased were aggravated and led to her death. Being the deceased's father and knowing her mental state, he had a duty to care for and protect his daughter and not to take her life away. The pre-sentence report is very unfavourable no one wants this 74-year-old man back home even his community. It is a pity. The report indicates that he is not fit for a non-custodial sentence, although the accused is advanced in age what he did is unlawful and the law provides a severe sentence. One found guilty and convicted of manslaughter is liable to life imprisonment. Considering all the above, accused Joseph Wekesa Musenjule is sentenced to serve twenty (20) years imprisonment. The period he has been in custody will be taken into account when computing his sentence. Right of appeal examined to the accused person.

DATED, SIGNED AND DELIVERED AT BUNGOMA ON THIS 11TH DAY OF OCTOBER 2024.

R.E.OUGO

JUDGE

In the presence of:

Joseph Wekesa Musenjule/ Accused

Mr Okaka For the Accused Person

Miss Matere State Counsel ODPP

Wilkister - C/A

