



**Republic v Sululia & 3 others (Criminal Case 11 of 2020)
[2024] KEHC 12710 (KLR) (17 October 2024) (Sentence)**

Neutral citation: [2024] KEHC 12710 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE 11 OF 2020
RB NGETICH, J
OCTOBER 17, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

STEPHEN SULULIA 1ST ACCUSED

CHRISTOPHER MEGIRI 2ND ACCUSED

ROBINSON SULULIA 3RD ACCUSED

MICHAEL KONOSEI 4TH ACCUSED

SENTENCE

1. By the judgement delivered on the 25th day of July,2024, this Honourable court found the 4th accused person guilty of the offence of murder contrary to Section 203 as read with section 204 of the [Penal Code](#) and convicted him under section 215 of the [Criminal Procedure Code](#) accordingly. The particulars of the charge were that on the 2nd day of July,2020 at Ndebe village, Kailer Sub-location in Baringo South Sub- County within Baringo County the accused person murdered Peter Tenges.
2. Upon delivery of judgment on the 25th July,2024, I directed that the matter be mentioned on the 23rd September, 2024 for records and mitigation and a pre-sentence report to be filed before then.
3. When the matter came up in court on the 23rd September,2024, the prosecution counsel Ms. Ratemo informed the court that they had no previous records for the accused.

Pre-Sentencing Report

4. The pre-sentence report was duly filed in court on the 18th September,2024 as directed. From the report, the accused is aged 32 years old. He had formal education up to standard four at Kailer Primary school when he dropped out in the year 2005 due to lack of parental support after the demise of his



father and his own personal will. After dropping out of school the offender started working as a farmer up to the time of his arrest. He got married in the year 2013 and they are blessed with three children. The offender indicates that he uses alcohol and this is his first-time offence. He attributes the offence to peer pressure and was under the influence of alcohol. At the time of preparing the report, the accused's mother was sick and admitted at Marigat hospital.

5. The offender's mother indicated that her son had been of good conduct before and he might have committed the offence under the influence of alcohol and peer pressure. She prayed for non-custodial sentence so that he can go back home and take care of her as she is very sick. She confirmed that reconciliation has not taken place noting that the deceased's family members refused to hold a meeting or a discussion with them.
6. The uncle prayed for a non-custodial sentence indicating that he is the one taking care of the offender's mother at the moment, and if released, he will be relieved from taking care of the accused's mother. The offender's wife also prayed for a non-custodial sentence so that he can continue with his parental responsibility. She confirmed that attempts to reconcile the families did not materialize. However, from the report, none of them showed any interest in rehabilitating and supervision of the offender.
7. Home report indicates that within the community, there was a land dispute over the grazing area between the two communities being the Tugens and Ilchamus. The local administration planned for a public baraza to resolve the issue. The deceased was selected as the chairperson of the meeting and as the meeting was ongoing, a few of the members present disrupted the meeting as they were dissatisfied with some of the decisions made. The offender while under the influence of alcohol and out of anger using his arrow and bow injured the deceased leading to his death.
8. The deceased was aged 57 years; he was a married with seven children. The deceased used to work as a village elder and his main source of income was little subsistence farming and casual jobs within the community. The secondary victims being the deceased's brother, the deceased's wife and the deceased's eldest son all opposed the offender being granted non-custodial sentence indicating that they are still bitter over the loss of their kin, they have not reconciled and if the offender is brought back to the community, they would harm him and they prefer he serves custodial sentence. The deceased's wife added that together with her children are not willing to accept any reconciliation process because after the demise of the main bread winner, they have really suffered leading to increased level of enmity between the two families. The son indicated that after the demise of his father, their family is currently dysfunctional and if the offender is given community rehabilitation sentence, his life is in danger since the level of bitterness is still very high.
9. The offender has been in custody since the year 2020, he accepts the offence indicating that he committed the offence under the influence of alcohol and peer influence. He says the owner of the land had purchased alcohol for him and three others so that they could disrupt the peaceful meeting that was going to take place. He prays for non-custodial sentence so that he can re-start his life a fresh, take care of his sickly mother and his school going children. He added that he has written several letters addressing the area assistant chief to facilitate reconciliation meeting but all has been in vain.
10. The village elder indicated that the offender is well known to him and his main problem is excessive consumption of alcohol and bad company. This is his first offence and at the moment, community rehabilitation is not suitable for him since the two families have not reconciled and the level of bitterness is still very high.
11. The local administrator confirmed that the offender has been writing letters requesting him to hold a reconciliatory meeting between the two families and says he was not able to hold any meeting due to hard stand from the victim's family. He opposed the offender being admitted into community-based



rehabilitation stating that reconciliation has failed and the victim's family is still bitter and for the best interest of his own safety the offender is safer serving his custodial sentence.

12. From presentence report, the home environment is not conducive for community rehabilitation. They do recommend the offender be dealt otherwise subject to court's discretion.

Mitigation

13. The defence counsel Mr. Kipkulei mitigated on behalf of the accused. He submitted that the accused is aged 32 years old with a young family of 3 children who depend on him as a sole bread winner and was also taking care of his ailing mother who was admitted at Marigat Sub- County Hospital at the time of preparing presentence report. He stated that the accused has been in custody since the year 2020 when he was arrested and he has learnt from his mistakes and he seeks forgiveness.
14. Counsel submitted that the accused is remorseful and admits that he committed the offence under the influence of alcohol. That from the pre-sentence report, the accused has been trying to beseech the deceased's family to have negotiations with his family but has not been successful as the deceased's family are still bitter. He prayed for a lenient sentence and prayed for custodial sentence for 5 years to run from the date of his arrest which will assist the accused to go through rehabilitation in prison and the same will also bring reprieve to the victim's family.
15. The prosecution counsel Ms. Ratemo submitted that counsel has not tendered any evidence to confirm admission of the accused's mother at Marigat Sub- County Hospital. She submitted that they do not oppose time spent in custody being factored in but she wishes to point out that the deceased was a village elder who was 56 years old, a bread winner of his family and as a result of the loss, his family has been dysfunctional.
16. Counsel further submitted that it is worth noting that while at time of the incident, the deceased and the elders had gone to adjudicate land matter, the accused chose to carry a bow and weapons which he aimed at the chest of the deceased fatally wounding him. She stated that it is worth considering that the injury was at the chest which shows that the accused knew the person he was aiming at. That the offence of murder attracts death sentence and considering the proposal of 5 years is below lenience for such an offence.
17. That the fact that this was a person who was in authority, they propose that the court issues deterrent sentence and thus propose 40 years imprisonment on account that the victim and the community in general are still bitter having lost their village elder who also had 7 children. They urged the court to consider their submissions while sentencing. On the issue of reconciliation, they do agree with the counsel that reconciliation was not possible on account of the bitterness that is still on the ground.

Determination

18. Under Section 204 of the *Penal Code*, a person convicted of murder shall be sentenced to death. The Supreme Court decision in *Francis Muruatetu & Another v Republic* [2017] eKLR while retaining the death sentence found that its mandatory nature was unconstitutional and stated as follows:-

“ 45. To our minds what Section 204 of the Penal Code is essentially saying to a convict is that he or she cannot be heard on why in all the circumstances of his/her case. The death sentence should not be imposed on him or her, or that even if he or she is heard, it is only for the purposes of the record as at that time of mitigation because the court has to impose the death sentence nonetheless, as illustrated by the foregoing Court of Appeal decision. Try as



we might we cannot decipher the possible rationale for this provision. We think that a person facing the death sentence is most deserving to be heard in mitigation because of the finality of the sentence.

46. We are of the view that mitigation is an important congruent element of fair trial. The fact that mitigation is not expressly mentioned as a right in *the constitution* does not deprive it of the necessity and essence in the fair trial process. In any case, the right pertaining to fair trial of an accused pursuant to Article 50 (2) of *the Constitution* are not exhaustive.”

The court therefore proceeded to pronounce itself thus:

“58. We now lay to rest the quagmire that has plagued the court with regard to the mandatory nature of Section 204 of the *Penal Code*. We do this by determining that any court dealing with the offence of murder is allowed to exercise judicial discretion by considering any mitigating factors in sentencing an accused person charged with and found guilty of that offence. To do otherwise will render a trial, with the resulting sentence under Section 204 of the Penal Code unfair thereby conflicting with article 25(c), 28, 48 and 50(1) and (2) (g) of *the Constitution*.

19. However, the court did not outlaw the death sentence. This has been re-affirmed by the Court of Appeal in the case of *Joseph Njuguna Mwaura & 2 Others -v- Republic* (2013) eKLR where the court stated that “the death penalty shall continue to be imposed in a case of a conviction where the law provides.
20. The sentencing objectives in Kenya have been captured in the Judiciary Sentencing Policy Guidelines at page 15 to be the following: -
- a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
 - d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
 - e. Community protection: to protect the community by incapacitating the offender.
 - f. Denunciation: to communicate the community’s condemnation of the criminal conduct.
21. In deciding whether to impose a custodial or non-custodial sentence, the court is required to take into account the following factors: -
- i. Gravity of the offence: - sentence of imprisonment should be avoided for misdemeanor.
 - ii. Criminal history of the offender. Taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.
 - iii. Character of the offender:- non-custodial sentence are best suited for offenders who are already remorseful and receptive to rehabilitative measures.



- iv. Protection of the community:- where the offender is likely to pose a threat to the community.
 - v. Offender's responsibility to third parties:- where there are people depending on the offender.
 - vi. Children in conflict with the law:- non- custodial orders should be imposed as a matter of course in cases of children in conflict with law, except in circumstances where, in light of the seriousness of the offence coupled with other factors, the court is satisfied that a custodial order is the most appropriate.
22. Having taken into account the circumstances leading to the commission of the offence herein, the mitigation by the accused, the recommendation by the Probation Officer, I am of the considered opinion that since reconciliation has not taken place and the family of the victim are still bitter, the home environment is not conducive for community-based rehabilitation. Considering the circumstances under which the offence was committed and the way it was committed by the accused using bows and arrows and specifically aiming at the chest, in my view he committed the offence in a very inhumane manner; further the offence was committed before the community members who were trying to amicably settle a land dispute. This is an act which should be frowned upon in the community and such violent acts in the community should be discouraged and condemned so as to allow members of the community live harmoniously and embrace resolving of disputes in a peaceful manner. It should also serve to deter the youth from being used to create disharmony in the society. In my view, the accused deserves deterrent sentence so as to deter would be offenders to refrain from taking the law in their hands. I find sentence of 25 years imprisonment.
23. Final Orders: -
1. Accused is hereby sentenced to 25 years imprisonment.
 2. Period served in remand to be computed in the sentence.
 3. Right of appeal 14 days.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT ELDAMA RAVINE HIGH COURT (SUB-REGISTRY) THIS 17TH DAY OF OCTOBER 2024.

RACHEL NGETICH

JUDGE

In the presence of:

Elvis – Court Assistant.

Ms. Ratemo for State.

Mr. Kipkulei for accused.

