



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRC/9/2020

THE REPUBLIC VS JUMANNE MWANGOLO AND CHIGAMBA BEJA AND 1 OTHERS

CUSTODIAL SENTENCE

1. The 3 accused were convicted of jointly murdering Moses Musyoka Delphine on 7th April 2020 at Nzuoni Village, Matuga SubCounty within Kwale County. The 1st and 3rd accused made confession statements and the 1st accused implicated the 3rd accused while the 3rd accused implicated the 2nd accused. The court applied the doctrine of common intention provided under section 21 of the Penal code.
2. Mr. Paul Magolo mitigated on behalf of the 1st and 2nd accused and stated that the 3 accused were remorseful and have been in custody since 2020 which at the time of writing this sentence is about 6 years. He argued that they have learnt their lesson and requested the court to consider a non-custodial sentence so that they can apply the lessons they have learnt in prison. He also stated that they seek forgiveness from the family. Mr Nabin mitigated on behalf of the 2nd accused and stated that he is a first offender. The 2nd accused also addressed the court and stated that he is the sole breadwinner back at home.
3. Mr. Frank Sirima for the state requested the court to consider the sentencing guidelines (GATS) especially on deterrence and denunciation. He reminded the court that the weapon used was a sharp weapon and is an aggravating factor. He reminded the court that according to the post mortem, the deceased had been cut three times on the head and on the shoulder. He cited Rv Moses Wasike (2024) Eklr which he used to suggest a sentence of 20 years where a murder was occasioned by a sharp weapon. He further cited R vs



Sima Kathiga Tama (2024) eKLR where the accused was sentenced to 26 years while considering the policy. He also wanted the court to take note that the 3rd accused was the step mother to the widow of the deceased (PW 1). He argued that the 3rd accused engaged the 1st and 2nd accused to kill the deceased so as to get his inheritance.

4. The three PSR were filed for each accused. For the 1st accused, the report stated he was raised by a well-wisher and it is the bad company he kept that led to the commission of the offence and recommended leniency. The report for the second offender recommended that he should not receive a non-custodial sentence as he was a man on a mission. The third report stated that there was a conflict on succession of land which is what led to the circumstances. Interestingly a recommendation of leniency was given.
5. There can be no excuse for murdering another human being where the law has not provided. This is sacrosanct and protected by article 26 of the Constitution. In the GATS part 5.2 no value can be placed on life lost and the court has always held that aggravating and mitigating circumstances be considered. See Michael Kathewa Laichena & another v Republic [2018] KEHC 5488 (KLR).
6. **Part 5.2 of GATS** discusses murder where it has been stated that a sentence is not a guided measure to the value placed on the life of the victim. It recommends considering aggravating and mitigating factors which the court can consider. **See Michael Kathewa Laichena & another v Republic [2018] KEHC 5488 (KLR).**
7. In **Francis Karioko Muruatetu & Wilson Thirimbo Mwangi in Petition No. 15 & 16 of 2015** the supreme court directed that the court has discretion to decide on whether or not to adhere to the mandatory nature of the death sentence.
8. The court has looked at several decisions where a sharp weapon was used resulting in the death of the deceased and what is common in all the decisions is that the sentences vary from 25 years to death sentences. Considering the aggravating and mitigating circumstances as well as the fact that 2 accused confessed, the court sentences all 3 accused to life imprisonment.
9. The court hereby sentences each of the 3 accused persons to 15 years imprisonment. Sentences to run from when first arraigned in court.
10. Right of appeal explained in Kiswahili.
11. It is so ordered.

Dated, signed, and delivered in Open Court/Online through MS TEAMS, this
.....19th... day of ...March..... 2026.

W. K. MICHENI



JUDGE

SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.
MOMBASA HIGH COURT
HIGH COURT CRIMINAL
DATE: 2026-03-24 19:12:38