



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Mukhwana & 2 others (Criminal Case E041 of 2021)
[2025] KEHC 1448 (KLR) (28 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 1448 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E041 OF 2021
DK KEMEL, J
FEBRUARY 28, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

DANIEL MUNIALO MUKHWANA 1ST ACCUSED

EVANS KHAEMBA 2ND ACCUSED

BEATRICE NANJALA 3RD ACCUSED

SENTENCE

1. The accused persons herein Daniel Munialo Mukhwana, Evans Khaemba and Beatrice Nanjala have been charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). Vide the judgment dated 29th November, 2024, the accused persons herein were found guilty and convicted accordingly.
2. Sentencing hearing took place on 3/2/2025 before Shariff J. However, the matter has been placed before me to come up with a ruling on sentence in view of the fact that i had heard the matter from the beginning and later came up with the judgement. M/s Ayieko learned counsel holding brief for Wamalwa Simiyu for the 2nd Accused relied on filed mitigating submissions dated 3rd February 2025 which are inter alia; that the 2nd accused is remorseful and that he pleads for leniency of the court; that he is a first offender; that he has a family with children; that he is the bread winner; that the accused's family depends on him for survival; that he prays that he be granted non-custodial sentence.
3. Mr. Olonyi for the 1st and 3rd Accused herein presented mitigation on 28/2/2025. He submitted that the court consider the fact that the victim and the accused persons are members of one family. That the accused have served substantial period while in custody during the pendency of this matter. Learned counsel submitted that the 1st accused herein is an administrator in the estate of the deceased herein and that he is expected to oversee the distribution of the estate of the deceased. It was submitted that



the accused persons are remorseful and that they have learned their lessons while in prison. Learned counsel sought for a non-custodial sentence.

4. Miss Karani for the prosecution submitted that they do not have records for the accused persons and that she left the matter with the court.
5. Miss Kibet, for the prosecution responded to the submissions by the 2nd Accused and submitted that the 2nd accused herein is a first offender; that a vibrant life of a senior citizen was lost; that the deceased was the father to the 1st and 2nd accused and husband of the 3rd accused herein; that the offence was well planned; that it arose due to a land issue; that the accused persons murdered the deceased so as to acquire the land through inheritance and that the body of the deceased was concealed inside a river for a long period before one of the sons decided to confess leading to the discovery of the body. It was submitted that this was a murder most foul yet there were other avenues of redress regarding the issue of the land such as the use of the clan elder or chief. Learned counsel sought for a custodial sentence.
6. This court called for pre-sentence reports by the probation department. They are dated 13th December, 2024. The same indicate inter alia; that the accused persons are first offenders; that the three accused persons do not benefit from community acceptance; that their release will likely trigger retaliatory attacks against the accused having been convicted for a serious offence and that the court considers the findings of the reports and prefers the appropriate sentence.
7. I have considered the mitigating submissions by both learned counsels for the parties herein. I have also considered the pre-sentence report filed by the probation department. 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 as unconstitutional and that the courts should receive mitigating circumstances from the offender before imposing an appropriate sentence thereafter and that the courts could as well impose a sentence of death if the circumstances warrant it.
8. From the post mortem report produced by Dr. Dickson Mchana (PW5) it is evident that the deceased had lacerations on his left scalp and that his nails were dark blue in nature. That there no signs of ill health and that both his ears had been eaten away. That internally, there were changes on his right lung and blood vessels while his stomach had food implying that he died within four hours of taking his meal. That he had an injury on his head as there was a blood clot and that his brain was decomposed. That there were no signs of manual strangulations and hanging. He formed the opinion that the cause of death was head injury secondary to blunt trauma. He produced the post mortem report dated 9th January 2016 as an exhibit.

The circumstances under which the deceased died are rather tragic. The three accused persons being led by the 3rd accused who is the mother of 1st and 2nd accused plus another who was later released and made a prosecution witness planned for the death of the deceased as a result of some fears that the deceased was likely to give more land to his second wife thereby leaving the 3rd accused, who was the eldest wife, to suffer with her children. They thus waited for the deceased to come for his supper before pouncing on him and then killing him and later dumped the body in a nearby river. They thereafter kept quiet about the matter even as they joined other family members in the search for the missing deceased who was later recovered from a nearby river and that after the burial, they kept the secret for almost a year before one of the children was knawed by guilt and spilled the beans thereby leading to the arrest of the accused herein. The deceased therefore died a painful death in the hands of his own family. The accused persons could have resorted to other channels of redress such as engaging the clan elder or chief or even placing a caution against the title to the land instead of eliminating the deceased so as to prevent him from giving a huge chunk of the land to his younger wife.



9. As regards the sentence to be imposed, the Court of Appeal in the case of 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.”

10. It is noted that the accused persons have been in custody throughout the trial and therefore the provision of Section 333 (2) of the *Criminal Procedure Code* will apply and that such period shall be considered. It is noted that the accused persons ended the life of an innocent man who was a sole bread winner for his family. The pre-sentence reports indicate that the community is still very hostile to the accused persons for what they did and that they are unwanted in the area and have been excommunicated and that if released on non-custodial sentence, then there will be retaliation. I find that a custodial sentence is suitable in the circumstances. The custodial rehabilitation will help to mould them to be better persons before being released to the society.

11. In the result, I order each of the accused persons herein Daniel Munialo, Evans Khaemba and Beatrice Nanjala to serve a sentence of twenty (20) years’ imprisonment which shall commence from the date of arrest namely 3rd December 2021.

Orders accordingly.

DATED AND DELIVERED AT SIAYA THIS 28TH DAY OF FEBRUARY, 2025

D. KEMEI

JUDGE

In the presence of:

Daniel Munialo Mukhwana.....1st Accused

Evans Khaemba.....2nd Accused

Beatrice Nanjala.....3rd Accused

Olonyi.....for 1st and 3rd Accused

Wamalwa Simiyu.....for 2nd Accused

M/s Karani.....for Prosecution

Ogendo/Diana.....Court Assistant

