



**Republic v Wakhisi (Criminal Case E011 of 2022)
[2025] KEHC 1854 (KLR) (28 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 1854 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E011 OF 2022
DK KEMEL, J
FEBRUARY 28, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

HERMAN MUKHEBI WAKHISI ACCUSED

SENTENCE

1. The accused herein Herman Mukhebi Wakhisi has been charged with an offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. Vide the judgment dated 6th December, 2024, the accused was found guilty and convicted accordingly.
2. Sentencing hearing took place on 21/2/2025. M/s. Wakoli, learned counsel for the defence submitted inter alia; that the accused is remorseful and regrets the offence herein; that he is a father of two children who are deeply affected; that the accused prays for lenient sentence; that the period spent in custody be considered.
3. Miss Kibet, for the prosecution submitted inter alia; that the court considers that a life of a teenage girl was lost; that the deceased had a future to live for; that the accused intended to defile the deceased and when she resisted, the accused killed her and later interfered with the scene of crime; that the deceased died a painful death and that the court should consider imposing a custodial sentence.
4. This court called for a pre-sentence report by the probation department. The same is dated 15th January, 2025. The same indicates inter alia; that the accused was born a normal child; that he attended primary education to completion and proceeded to Secondary school but dropped out due to lack of support from the mother with the pre-requisites as the father had passed on in the year 2000; that the accused started engaging in casual jobs in farms; that he later hired a motor cycle and engaged in boda boda riding then engaged in selling of second hand clothes; that the accused had a child out of wedlock; that the accused later married Belinda Onyango who was co-accused before the charge against her was



withdrawn by the prosecution vide a Nolle prosequi; that the accused relates well with family members some of whom have never believed that their kin was involved in the death of the deceased.

The report further indicated that the accused relates well with everyone; that prior to the incident, he had been linked to similar incidents before mainly involving women; that the accused had severally defiled the deceased on the pretext that he would marry her; that on the material date the deceased visited the accused who demanded to have sex with her but however, accused's wife was present but that the accused demanded to have sex with the deceased who declined forcing him to violently assault her leading to her death; that at the time of her demise, the deceased was a grade six pupil aged fourteen (14) years old.

The report further indicated that the deceased was brought up with her mother since her parents had separated; that her mother later passed on in the year 2024 after tendering her evidence; that the deceased's family is still traumatized by the loss of their kin through a heinous act and that they are not ready to forgive or engage in any kind of reconciliation and who have urged the court to prefer a sentence that is commensurate with the offence committed.

Finally, the Probation officer concluded by submitting that the accused has four children from different relationships; that he separated with his first wife in 2019 due to his high handedness that led to irreconcilable differences arising from promiscuous behavior; that some of his children are under guardianship of the maternal grandmother while the remaining are under custody of their mothers; that the accused denied the offence but does not seem remorseful; that the accused does not enjoy acceptance in the community; that the court considers the findings and prefers an appropriate sentence.

5. 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 (2017) eKLR, the mandatory nature of death sentence was declared as unconstitutional and that the courts should receive mitigating circumstances from an offender before imposing an appropriate sentence thereafter and that the courts could as well impose a sentence of death if the circumstances warrant it.
6. From the post-mortem report produced by Dr. Elly Kiplimo Kosgey (PW5) of Bungoma County Referral Hospital, as exhibit 1 and the photographs of the scene of crime produced as exhibit 2 by Johana Tanui, the same shows that the deceased had deep cut wounds on the forehead as well as blood (hematoma) in the brain. The cause of death was asphyxia due to drowning and severe head injury.
7. The circumstances leading to the death of the deceased are rather tragic. It is clearly indicated that the deceased was a girlfriend of the accused herein and that she had visited him on the material night only for things to turn awry when the accused demanded to have sex with her only for the deceased to decline as his wife was also present. The accused then viciously assaulted the deceased and later placed her body in a sack and dumped the body in a nearby river and later cleaned the floor of his house by smearing it with cow dung to conceal evidence. The hapless deceased died a very painful death. The pre-sentence report has clearly indicated that the accused is a violent person and a Cassanova in the village and getting laid by several women with abandon.
8. As regards the sentence to be imposed, the Court of Appeal in the case of Charo Ngumbao Gugudu v 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 v R* (1990) eKLR.”

9. I find the circumstances of the case and the pre-sentence report indicate that the family of the accused have not initiated any reconciliation with the family of the deceased. The accused does not enjoy community acceptance due to the monstrous nature of the attack on an innocent young girl and whose life has been cut short thanks to the accused’s insatiable appetite for sex. I find that the circumstances warrant a custodial rehabilitation for the accused. The custodial rehabilitation will benefit the accused herein before he can be allowed to rejoin the community. The custodial rehabilitation will help to mould him to be a better person before being released back to the society. It is also noted that the accused remained in custody throughout the trial and thus the period spent in custody must be factored in the sentence to be imposed in line with the provisions of section 333(2) of the *Criminal Procedure Code*. The accused was arrested on 11/3/2022.
10. In the result, I order the accused herein Herman Mukhebi Wakhisi to serve a sentence of thirty (30) years’ imprisonment which shall commence from the date of arrest namely 11/3/2022.

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

D. KEMEI

JUDGE

In the presence of:

Herman Mukhebi Wakhisi....Accused

Ms. Wakoli.....for Accused

Ms. Karani.....for Prosecution

Ogendo/Kizito.....Court Assistant

