



**Republic v Barasa (Criminal Case E024 of 2021)
[2024] KEHC 759 (KLR) (31 January 2024) (Sentence)**

Neutral citation: [2024] KEHC 759 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E024 OF 2021**

DK KEMEL, J

JANUARY 31, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

DICKSON MASIKA BARASA ACCUSED

SENTENCE

1. The accused herein Dickson Masika Barasa has been charged with an offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). Vide the judgement of this court dated 1.11.2023, the accused was found guilty and convicted accordingly.
2. During the sentence hearing conducted on 27.11.2023, Miss Lunani for the accused submitted that the accused is a first offender with a young wife and two children who rely on him. She urged the court to consider the pre-sentence report which seems to indicate that the accused is not the real culprit and that the deceased's wife has no problem if the accused is granted a non – custodial sentence and that the families be given an opportunity to reconcile. Finally, it was submitted that the accused is sorry that life was lost.
3. Miss Mwaniki for the prosecution submitted that custodial sentence is appropriate in the circumstances since human life was lost. Learned counsel pointed out the accused's conduct in denying involvement despite overwhelming evidence against him even after being convicted does not auger well for a non-custodial sentence. It was submitted that the accused is not remorseful. It was finally submitted that a deterrent sentence be given to serve as a lesson to others of his ilk.
4. A pre-sentence report was filed by the County Probation officer Bungoma. It is dated 24.11.2023. It indicates that the accused still maintains his innocence save that he had had an altercation with the deceased earlier in the day. The family of the accused have vouched for his release on a non-custodial sentence while that of the deceased are still bitter that the offender's family has not approached them



for reconciliation even when they were open to the same. The community is positive to a release of the accused on a non-custodial sentence.

5. I have considered the submissions of both learned counsels as well as the pre-sentence report. 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 v Republic* (2017) eKLR, the mandatory nature of death was declared unconstitutional and that courts should receive mitigation circumstances from the offender before imposing an appropriate sentence thereafter. The court could still pass a sentence of death if the circumstances warrant it.
6. The circumstances leading to the death of the deceased are rather tragic in that he had earlier been involved in an altercation with the accused who actually assaulted him. The deceased sought treatment at a nearby health centre and that later in the evening they converged at a changaa drinking den where they purportedly buried the hatchet only for the accused to later on waylay him and kill him. The post mortem report prepared by PW8 indicated that the cause of death was cardiorespiratory arrest due to massive hemothorax. The stab wound on the chest could not allow the deceased to survive as his blood vessels had been severed. The assailant stabbed him and left him for dead. The deceased therefore must have died a painful death. It transpired from the evidence that the accused had earlier confronted the deceased after he was left out of work at a construction site that the deceased supervised. The altercation led to the accused injuring the deceased with a stone and which forced the deceased to seek for treatment at a nearby health facility. The deceased later met the accused at a changaa den where they purported to bury the hatchet only for the accused to waylay him later at night as the deceased walked home. It is clear that the accused was not done yet with the deceased over having been left out of work at a construction site and thus eliminated the deceased in revenge. The deceased did not deserve to die. Had the accused resorted to other channels of redress such as involving the clan elder, the deceased would be alive today. The accused should not have taken his anger upon the deceased over such a minor thing as being denied work. The killing of the deceased was thus unwarranted. I find the circumstances of the offence herein requires custodial rehabilitation as it has transpired that the accused has some ungovernable anger. The custodial rehabilitation would help to mould him into a better individual.
7. Regarding the sentence to be imposed, it is trite that the sentence imposed on an accused must be commensurate to the moral blame worthiness of the offender and that the court must look at the facts and circumstances of the case in their entirety. See *Ambani v R* (1990) eKLR. 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 and 2 Others v R* [2017] eKLR, the mandatory nature of death sentence was declared as unconstitutional and thus courts were expected to receive mitigation from offenders before imposing an appropriate sentence. The courts still can impose a sentence of death if the circumstances warrant it. The deceased herein led a normal life and providing for his family. The life of the deceased has been cut short thanks to the ungovernable temper of the accused herein. It was sheer barbarity on the part of the accused to kill the deceased just because the deceased denied him work at a construction site. This calls for a deterrent sentence in the matter. It is noted that the accused has been in custody throughout the trial. This period will be taken into consideration pursuant to section 333 (2) of the *Criminal Procedure Code*. The custodial rehabilitation will help to mould the accused into a better individual before being released back to the society.
8. In the result, I order the accused herein Dickson Masika Barasa to serve a sentence of twenty five (25) years' imprisonment which shall commence from the date of arrest namely 16.6.2021

DATED AND DELIVERED AT BUNGOMA THIS 31ST DAY OF JANUARY 2024

D KEMEI,



JUDGE

In the presence of :-

Dickson Msika Barasa accused

Shiku for Lunani for accused

Miss Kibet for prosecution

Kizito Court Assistant

