



**Republic v Ndiema (Criminal Case E015 of 2021)  
[2024] KEHC 3278 (KLR) (18 March 2024) (Sentence)**

Neutral citation: [2024] KEHC 3278 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL CASE E015 OF 2021**

**DK KEMEL, J**

**MARCH 18, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JONATHAN KIPYEGON NDIEMA ..... ACCUSED**

**SENTENCE**

1. The accused herein Jonathan Kipyegon Ndiema 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 31.6.2024, the accused was found guilty and convicted accordingly.
2. During the sentence hearing conducted on 6.3.2024, Mr. Olonyi for the accused, submitted that the accused is a young man with a future and who has a family that depend on him for support. It was also submitted that the court should take into consideration the fact that the incident arose out of a family land dispute. It was finally urged that the court do give the accused another chance to make amends.
3. Miss Kibet for the prosecution submitted that the accused is a first offender but that the court must take note of the fact that a life was lost and that the deceased went through a lot of pain before he died. It was finally submitted that the court do take into consideration the pre -sentence report.
4. A pre-sentence report was duly filed by the County Probation Officer. The same has given a comprehensive view of the community as well as families of the victim and accused. The report indicates that the accused takes responsibility for his actions and claims that he was overwhelmed by the emotions. However, the victim's family are still bitter as the offender's family has not offered any reconciliation and who are still arrogant.

It was the view of the probation officer that a no- custodial sentence may not suffice at this point in time.



5. I have considered the oral submissions of 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 of Kenya in *Francis Karioko Muruatetu & 2 others v Republic* (2017) eKLR, the mandatory nature of death sentence was declared unconstitutional and that courts should receive mitigating circumstances from offenders before imposing an appropriate sentence thereafter. The court could still impose a sentence of death if the circumstances warrant it.
6. The circumstances leading to the death of the deceased are rather tragic as it transpired that the deceased had gone to supervise a certain farm where maize planting was to take place only for the accused to arrive while in company of others and attacked him by pelting him with stones seriously injuring him and who passed on while undergoing treatment. The accused herein is a nephew of the deceased. Apparently, there had been a family land dispute which had been resolved by the High Court at Kitale wherein the estate of the accused's grandfather and who was father to the deceased was ordered to be distributed to both male and female children and that the farm where the incident had taken place had been allocated to the female children and who had leased it to a third party. The deceased had visited the land to supervise the same during maize planting. It appeared that the accused was opposed to the mode of distribution and decided to incite the villagers to attack the deceased and his companions and that he was the one in the forefront. The post mortem report on the body of the deceased was conducted by Davis Nangili (PW6) who formed the opinion that the cause of death was head injury secondary to assault. It is clear that the deceased died a painful death. The accused herein was not happy about the distribution of the estate of his late grandfather and therefore was out to get rid of any family member who would make a pitch for the said portion of land that had been allocated to female children of his grandfather. It is common knowledge that land is a contentious and emotive issue and thus the accused herein took the law into his hands by getting rid of the deceased through killing by pelting him with stones. Had the accused resorted to other channels of redress such as involving the clan elder or going back to the succession court at Kitale for review of the judgement or better still move to the Court of Appeal and challenge the said judgement, the deceased would be alive today. Looking at the circumstances of the offence and the pre-sentence report, i find a custodial rehabilitation is suitable. It also transpired that the accused has some anger related issues and hence the custodial sentence will 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 with the moral blameworthiness of the offender and that the court must look at the facts and circumstances of the case in their entirety. It is noted that the accused remained in custody for a period of about seven months before posting bail on 3.12.2021 and that he has since been out on bond until his conviction on 31.1.2024. The period spent in custody will be taken into consideration pursuant to the provisions of section 333(2) of the *Criminal Procedure Code*. The custodial rehabilitation will help to Mould the accused into a better individual before he rejoins the society.
8. In the result, i order the accused herein Jonathan Kipyegon Ndiema to serve a sentence of twenty five ( 25) years' imprisonment from date of conviction namely 31.1.2024.

**DATED AND DELIVERED AT BUNGOMA THIS 18<sup>TH</sup> DAY OF MARCH 2024**

**D KEMEI,**

**JUDGE.**

In the presence of :-

Jonathan Kipyegon Ndiema Accused



Olonyi for Wakoli for Accused

Miss Kibet for Prosecution

Kizito Court Assistant

