



**Republic v Tepaluk & 2 others (Criminal Case 4 & 15 of 2020 (Consolidated)) [2024] KEHC 4898 (KLR) (25 April 2024) (Sentence)**

Neutral citation: [2024] KEHC 4898 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPENGURIA  
CRIMINAL CASE 4 & 15 OF 2020 (CONSOLIDATED)**

**AC MRIMA, J**

**APRIL 25, 2024**

**BETWEEN**

**REPUBLIC ..... STATE**

**AND**

**MICHAEL TEPALUK ..... ACCUSED**

**AS CONSOLIDATED WITH  
CRIMINAL CASE 15 OF 2020**

**BETWEEN**

**REPUBLIC ..... STATE**

**AND**

**STANLEY CHARITO SIWATUM ..... 1<sup>ST</sup> ACCUSED**

**ALEX PIRO SIWATUM ..... 2<sup>ND</sup> ACCUSED**

**SENTENCE**

1. The accused were charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. They pleaded not guilty and after a full hearing, this Court found them guilty as charged.
2. The Court called for a Pre-Sentence Reports for purposes of sentencing.
3. The Court also received detailed submissions on mitigations and sentencing from all Counsel.
4. This Court is well abreast of the principles on sentencing and the 2016 Judiciary of Kenya Sentencing Policy Guidelines. As stated by the Supreme Court of Kenya in Francis Karioko Muruatetu & another



v Republic [2017] eKLR, despite their importance, the guidelines do not replace judicial discretion. This is what the Apex Court stated: -

(72) We wish to make it very clear that these guidelines in no way replace judicial discretion. They are advisory and not mandatory. They are geared to promoting consistency and transparency in sentencing hearings. They are also aimed at promoting public understanding of the sentencing process.

5. The purpose of sentencing is expounded in page 15, paragraph 4.1 of the Sentencing Policy Guidelines as follows: -

Sentences are imposed to meet the following objectives:

1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.
4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
5. Community protection: To protect the community by incapacitating the offender.
6. Denunciation: To communicate the community's condemnation of the criminal conduct.

6. In sentencing, the Court considers various mitigating factors. Some include: -

- (a) age of the offender;
- (b) being a first offender;
- (c) whether the offender pleaded guilty;
- (d) character and record of the offender;
- (e) commission of the offence in response to gender-based violence;
- (f) remorsefulness of the offender;
- (g) the possibility of reform and social re-adaptation of the offender;
- (h) any other factor that the Court considers relevant.

7. In this case, the Accused were relatives to the deceased. The deceased had bought land and even settled the families of the Accused thereon. When time came that the deceased wanted to utilize his land, the Accused turned around and resisted. They pressed to disposes the deceased of his land.



8. The Accused were determined that the deceased would not set his foot on his land. On the fateful day, they ensured that all those who had accompanied him escaped from their hostility before they turned to the deceased.
9. This matter presents a common scenario where people revert to violent ways in dispossessing others of their parcels of land. If the Accused were in any way aggrieved by the deceased, they had the option of initiating lawful means towards settling the matter. This Court would not condone such acts of lawlessness. The right message has to be sent to all and sundry that use of violence is not one of the legitimate ways of settling land ownership disputes.
10. To that end, at the backdrop of the mitigations tendered, this Court is of the considered position that it called upon to render sentences that are deterrent. The Accused are not suitable for any non-custodial sentences just as contained in the Pre-Sentence Reports. The Accused need to undergo defined counselling and rehabilitation. That can only be achieved through a custodial sentence.
11. Consequently, the following sentences are hereby rendered: -
  - a. Each of the Accused is hereby sentenced to 30 years' imprisonment.
  - b. The sentences shall run from the date of judgment; that is 6<sup>th</sup> March, 2024; as they were previously out on bond.
  - c. File marked as CLOSED.
12. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT KAPENGURIA THIS 25<sup>TH</sup> DAY OF APRIL, 2024.**

**A. C. MRIMA**

**JUDGE**

Sentence delivered virtually and in the presence of:

Mr. Ndinyo and Mr. Chebii, Learned Counsel for the Accused.

Miss. Sugut, Learned Counsel watching brief for the victim's family.

Miss Sugut holding brief for Mr. Majale, Learned Prosecutor instructed by the Office of the Director of Public Prosecutions, the State.

Juma/Hellen – Court Assistants.

