



**Republic v Musanya (Criminal Case E035 of 2022)
[2024] KEHC 11764 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11764 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E035 OF 2022
REA OUGO, J
SEPTEMBER 26, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

DAN ANYALIKA MUSANYA ACCUSED

RULING

1. The accused Dan Anyalika Musanya was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. On 26/6 2024 the prosecution and accused entered into a plea bargain agreement. The charge of murder was substituted with manslaughter contrary to section 202 as read with section 205 of the Penal Code. The particulars of the offence are; on the 16th of November 2022 at Huruma village , Tabani Sub- location, Tongaren Location in Tongaren Sub-County within Bungoma County unlawfully caused the death of Billy Agengo Mudanya.
2. After pleading guilty to manslaughter and upon conviction this court sought a pre-sentence report on the accused person. I have considered the facts of this case together with the said report. The accused is 35 years old. The deceased was his cousin, son of the paternal aunty. The accused is said to have a strained relationship with his aunty and her children. The report indicates that the accused is remorseful and seeks a lenient sentence, that he is cognizant of the prevailing hostility at the ancestral home and seeks a minimum period in custody. His mother was shocked at his action and prayed for a non-custodial sentence. The deceased’s mother was not interviewed as she was unwell, the deceased’s family has since relocated from the homestead. The community stated that the accused spent most of his life away from the family and that little was known about his character and general conduct in the family. The community and the extended family are not ready to take him back. The report indicates that the accused has weak social and family ties with low capacity for anger management and rational decision making. The recommendation is that he does not qualify for community- based interventions and that he is not suitable for a non-custodial sentence.



3. The prosecution asked this court to treat him as a first offender.
4. Mr. Wattangah in mitigation stated as follows; the accused person is remorseful for the death caused. It was not intentional he did not intend to kill the deceased. A quarrel erupted between him and the deceased, the accused was provoked and he threw a jembe towards the deceased and it unfortunately hit the deceased on the head and the deceased fell down. If he intended to kill the deceased he would have continued to hit him but he was also in shock that the jembe fell on the head. That he has been in custody for one and half years, he is a youngman and is the breadwinner of his family. He has 2 children who depend on him and he regrets his actions and seeks a lenient sentence. He will not repeat it again to any other person.
5. I have considered that the accused is a first offender the mitigation raised, the recommendation from the probation officer and the guidelines on sentencing. A life was lost. The accused took a jembe and threw it at the deceased and it hit his head. A jembe if thrown at anyone will cause injury in this case it caused grievous injuries which caused the death of the deceased .Even though he claims he was provoked; his actions were unwarranted. He could have walked away not take a jembe and throw it at a person who had not even attacked him. An irrational act or thought has consequences. The report indicates that the accused cannot go back to his community. Considering all this, I sentence the Dan Anyalika Musanya the accused to twenty (20) years imprisonment. The time he has spent in custody will be taken into account when commuting his sentence. He has a right of appeal within 14 days.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 26TH DAY OF SEPTEMBER 2024.

R.E.OUGO

JUDGE

In the presence of:

Dan Anyalika Musanya/ Accused - present

Mr. Wattangah - For the Accused person

Miss Matere - For the State/ ODDP

Ms Wilkister - C/A

