



**Republic v Omulama & 2 others (Criminal Case E004 of 2022)
[2024] KEHC 13543 (KLR) (31 October 2024) (Sentence)**

Neutral citation: [2024] KEHC 13543 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE E004 OF 2022
JN KAMAU, J
OCTOBER 31, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

RANDON ANDANJE OMULAMA 1ST ACCUSED

ELIJAH ENOCK AMUNGUI ALIAS SOMO 2ND ACCUSED

AGGREY ALIJA AHOLI 3RD ACCUSED

SENTENCE

1. The Judgment herein was delivered on 31st July 2024. The Accused persons herein were found guilty of the offence of the murder of Zaphania Olongo Chimoto contrary to Section 203 of the [Penal Code](#) as read with Section 204 thereof, and were convicted accordingly under Section 215 of the [Criminal Procedure Code](#) Cap 75 (Laws of Kenya).
2. In their mitigation, the 1st, 2nd and 3rd Accused persons still maintained that they did not the kill the deceased herein. However, as the court had already found them guilty, they sought that the court be lenient on them. The 1st and 2nd Accused persons stated that they were the breadwinners of their families while the 3rd Accused person said he was a student who wished to go back to school. They asserted that the Pre-Sentence Reports were positive and urged this court to mete upon them, non-custodial sentences.
3. On its part, the Prosecution stated that the Pre-Sentence Reports were negative and pointed out that the deceased’s mother suffered mental instability due to the loss of her only son and who was the breadwinner of the family. It added that the victim’s family was still bitter about the incident. It therefore urged this court to mete out severe sentences to deter the Accused persons and others from committing such an offence.



1. Vivian Sabilah, J. Sahani and Mariam Korir, Probation Officers, Vihiga County Office filed the Pre-Sentence Reports in respect of the 1st, 2nd and 3rd Accused persons. The 1st and 2nd Accused person's Pre-Sentence Reports were both dated and filed on 11th October 2024. The 3rd Accused person's Pre-Sentence Report was dated 9th October 2024 and filed on 11th October 2024.
2. The 1st Accused person was seventy-five (75) years old. He attended Ebbiba Primary School but dropped out in Standard three (3) due to financial constraints. He moved to Kisumu where he worked as a caretaker for six (6) years. He then returned home and engaged in peasant farming and casual work until when he was arrested.
3. He was a Christian, polygamous and did not have any children. He was of good health save for complaints of pain in his ribs and blurred vision on his left eye. He consumed local brew and had no criminal records.
4. He denied having committed the offence but pleaded for leniency. He prayed for a non-custodial sentence.
5. The 2nd Accused person was sixty (60) years old. He attended Ebusiratsi Primary School but dropped out while in Standard seven (7) due to lack of school fees. He engaged in casual jobs within the locality and in Njoro, Nakuru where he also worked in flower farms. In 2014, he returned home and engaged in peasant farming and selling of stock until the day of his arrest.
6. He was married and blessed with nine (9) children. He did not co-exist with his elder brother and his spouse following a land boundary dispute. However, he had no criminal history.
7. He also denied having committed the offence but sought for leniency. He said that he was elderly, sickly and a first offender. He pointed out that an unfavourable sentence would adversely affect his school going children. He sought for a non-custodial sentence.
8. The 3rd Accused person was twenty-one (21) years old. He was a Christian. He went to school at Ebbiba Primary School and Hobunaka Secondary School where he dropped out at Form two (2) after he was arrested for the offence herein. Before his arrest, he had sired a child with his girlfriend who was also school-going. He had a history of substance abuse, that is local brew. He was also suspected to smoke bhang. He was of good health, related well with his guardians and neighbors and had no criminal history.
9. He denied having committed the offence even after conviction. He sought for a lenient sentence to enable him provide for his young family and go on with his life.
10. All the Accused persons' families, the Local Administration and the Community prayed that the court exercises leniency while sentencing the Accused persons on the ground that they did not have any history of violent behavior prior to this incident.
11. On the other hand, the deceased's family was still bitter and angry with the Accused persons for having robbed them of their only son and brother. They did not want to be associated with them and prayed that they be punished by law to deter them and others from committing the same criminal act.
12. Notably, sentencing is one of the most intricate aspects of trial. Indeed, a trial does not end unless a sentence has been meted out. The principle of sentencing is fairness, justice, proportionality and commitment to public safety. The main objectives of sentencing are retribution, incapacitation, deterrence, rehabilitation and reparation. The Sentencing Policy



Guidelines in Kenya have added community protection and denunciation as sentencing objectives. The objectives are not mutually exclusive and can overlap.

13. It was important that the sentence communicate to the community, condemnation of their criminal act. The sentence would indirectly send a strong signal to deter would be offenders from committing such an offence. The sentence also had to be one that was hinged on retributive justice for the secondary victims.
14. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of the offence at the time of sentencing them, chances of the Accused persons being reintegrated in the society would be next to impossible as there were possibilities of being harmed.
15. After serving a sentence, the offenders could rejoin society as reformed people capable of re-integration into the society. They would have learnt their lesson and others would have learnt through them.
16. Killing someone was an abomination in the society. That could explain why the victim's family did not want them released on a non-custodial sentence. Justice not only needed to be done but it had to be seen to be done.
17. This court looked at the Post-mortem Report dated 30th April 2022 and noted that the deceased died as a result of failure of circulation of blood secondary to blunt force trauma following assault. The Prosecution's evidence showed that the Accused persons herein attacked him beat him with *rungus* on allegations of stealing arrowroots.
18. Although the Accused persons urged this court to mete out a non-custodial sentence upon them, this court did not find it prudent to grant the same due to the nature of the offence. The nature of the injuries the deceased sustained showed the malice that the Accused persons had and showed their intention of killing him.
19. Having considered the facts of this case and the Accused persons' mitigation and weighed against the death sentence that is prescribed for the offence of murder under Section 204 of the *Penal Code*, this court came to the firm conclusion that a non-custodial sentence would be unjust as a life was lost. Indeed, the Probation Office had found that none of the Accused persons was suitable to be given a non-custodial sentence.
20. It was the considered view that as a life was lost and the Accused persons proceeded with the full trial, a sentence of fifteen (15) years imprisonment would be suitable and adequate herein as they did not kill him on the spot but he died later. It was irrespective that the deceased was a thief or a trouble maker as they ought not to have taken the law into their hands. They were the accusers, investigators and the jurors which was against the rules of natural justice. This court could have meted out a lower sentence had they entered into a Plea Bargain Agreement.
21. This court was mandated to consider the period the Accused persons spent in remand while their trial was on going in line with Section 333(2) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya).
22. The said Section 333(2) of the *Criminal Procedure Code* provides that: -

“Subject to the provisions of section 38 of the *Penal Code* (cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code



Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody” (emphasis court).

26. Further, the Judiciary Sentencing Policy Guidelines provide that: -

“The proviso to section 333 (2) of the Criminal Procedure Code obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.”

27. The requirement under Section 333(2) of the Criminal Procedure Code was restated by the Court of Appeal in Abamad Abolfathi Mohammed & another v Republic [2018] eKLR.

28. The Accused persons were arrested on 28th May 2022. The 1st, 2nd and 3rd Accused persons were released on bond on 17th October 2022, 25th October 2022 and 23rd January 2023. This court cancelled their bonds on 31st July 2024 when it convicted them. The time they remained in custody therefore ought to be taken into consideration while computing their sentence.

Disposition

29. Accordingly, having convicted the 1st, 2nd, and 3rd Accused persons of the offence of murder contrary to Section 203 as read with 204 of the Penal Code, each of them be and is hereby sentenced to fifteen (15) years imprisonment which will run from today.

30. For the avoidance of doubt, the period the 1st Accused person spent in custody between 28th May 2022 until 17th October 2022 and between 31st July 2024 and 30th October 2024 be and is hereby taken into account while computing his sentence in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

31. Further, the period the 2nd Accused person spent in custody between 28th May 2022 until 25th October 2022 and between 31st July 2024 and 30th October 2024 be and is hereby taken into account while computing his sentence in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

32. In addition, the period the 3rd Accused person spent in custody between 28th May 2022 and 23rd January 2024 and between 31st July 2024 and 30th October 2024 be and is hereby taken into account while computing his sentence in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

33. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 31ST DAY OF OCTOBER 2024

J. KAMAU

JUDGE

