



**Republic v Shiraho (Criminal Case E003 of 2024)
[2024] KEHC 13343 (KLR) (31 October 2024) (Sentence)**

Neutral citation: [2024] KEHC 13343 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE E003 OF 2024
JN KAMAU, J
OCTOBER 31, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

COLLINS SHIRAHU ACCUSED

SENTENCE

1. The Accused person herein was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code Cap 63 (Laws of Kenya). He entered into a Plea Agreement on 29th July 2024 whereupon this court convicted him of the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.
2. The facts of the case were that on 20th January 2024, Esther Nyaboke (hereinafter referred to as the “deceased”) left her place of work at around 1700hours and proceeded home. While the deceased and the Accused person were in the house, at about 2200 hours, a quarrel ensued between them. Their neighbours, Everline Nekesa and Estheri Shanisa Ngaira heard them quarrel and the deceased crying. They did not, however, bother to check on the deceased since they were used to her and the Accused person having fights.
3. The following day, the Accused person left for work. He returned to the house at 8.00 am and met the deceased’s sister, Jackline Ludenyi. He gave her a cup of flour and told her to prepare porridge for the deceased. At around 9.00 am, she took porridge to the deceased and found her lying on the sitting room floor next to the door. She tried to wake her up but she did not respond. She left the porridge for her to drink once she woke up thinking she was still drunk.
4. At about 1100 am, the aforesaid Everline Nekesa went to the Accused person’s house to pick her jerrican that the deceased had borrowed from her. She found the door locked from the outside. When she opened it, she found the deceased lying on the floor next to the door looking unconscious. She called



Jackline Ludenyi and Norah Vusigwa who were neighbours. They came and saw that the deceased was dead.

5. The Accused person's mother, Esther Ngaira, informed the Area Assistant Chief of the incident and later reported the matter to Shamakhokho Police Post. Police Officers visited the scene and found the deceased having a discharge from the mouth and nose. Her neck movements were loose. Her face and the left hand were swollen. They took her body to Vihiga County Referral Mortuary. The Accused person was arrested on the same day from his hideout at Kabwareng, Nandi County.
6. A postmortem examination was conducted on 2nd February 2024. The doctor formed the opinion that the cause of the deceased's death was severe neck injury secondary to blunt force trauma following assault.
7. After investigations were completed, the Accused person was charged with the offence of murder. The Postmortem Report dated 2nd February 2024 was produced as Exhibit 1. The murder weapon was not recovered.
8. Having entered into a Plea Agreement, the Accused person urged this court to sentence him to ten (10) years. On its part, the State recommended a sentence of fifteen (15) years imprisonment.
9. In his mitigation, the Accused person pointed out that there was a difference of ten (10) years between him and the deceased. He was forty (40) years while she was aged fifty (50) years old. He asserted that he had come to love her unconditionally and hence regretted his action. He added that on the material date they were both intoxicated and they got into an argument after she had reunited with her husband.
10. He asserted that he had reflected on his actions while he had been in custody and learnt the importance of restraint in such matters. He therefore urged this court to be lenient on him as he was a fairly young man with a family that depended on him.
11. On its part, the Prosecution submitted that the Accused person ought to have handled the challenges that he and the deceased had differently. It submitted that the deceased's children had been left motherless and helpless. It added that the victim's family was still bitter regarding this incident.
12. It urged this court to consider the nature of injuries that the Accused person inflicted on the deceased and mete upon him a severe sentence to deter him and others from committing such an offence.
13. According to the Pre-Sentence Report of Mariam Korir, Probation Officer, Vihiga County that was dated 26th August 2024 and filed on 2nd September 2024, the Accused person was forty (40) years of age. He attended Ivumbu Primary School and Kabwarine Primary School. He dropped out of school in Standard seven (7). He later went to Kisumu to work as a herds boy for some months. He returned to Shamakhokho to live with his maternal aunt, Esther Eshivisa in Butiti village. He engaged casual work. His attempt at marriage failed. He consumed alcohol.
14. He admitted to having committed the offence. He stated that he had a disagreement with the deceased with whom he was in a relationship after drinking and the same led to a fight. He stated that he noticed that the deceased had died in the morning and he ran away. He attributed the incident to alcoholism. He pleaded with this court to exercise leniency.
15. His family was resentful and did not want to associate with him. The secondary victims were bitter with him for having killed their own leaving behind orphaned children. They did not wish to associate with him and his family other than witnessing him being punished by law.
16. The Local Administration pointed out that the Accused person had not been linked to any criminal activity. It averred that the community had no issue with him save for his alcoholism and the offence



- that he committed. It blamed him for the offence but opined that the same could have been caused by drunkenness and domestic disagreement. It observed that the incident had hampered the relationship of the two (2) families who were neighbours.
17. Majority of the community members raised strong objections towards any likelihood of the Accused person being considered for a non-custodial sentence.
 18. The Probation Officer did not find the Accused person to have met the threshold to be considered for community rehabilitation.
 19. 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.
 20. It was also important that the sentence communicate to the community, condemnation of his 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.
 21. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of his offence at the time of sentencing him, chances of the Accused person being reintegrated in the society would be next to impossible as there were possibilities of being harmed.
 22. Killing someone is an abomination in the society and that explained why the Accused person's family and community did not want him released on a non-custodial sentence. Justice not only needed to be done but it had to be seen to be done.
 23. The Accused person had never been charged with any offence prior to the incident herein. It was clear from the facts of the case and the Pre-Sentence Report that he killed the deceased while he was intoxicated. The deceased who was his girlfriend but another man's wife. The jealousy that he expressed was not worth the trouble.
 24. Having considered the facts of this case, the Accused person's mitigation, the Prosecution's response thereto, the Pre-Sentence Report and bearing in mind that sentencing was the sole discretion of the court, this court came to the firm conclusion that a sentence of ten (10) years imprisonment was suitable and adequate herein purely because the Accused person entered into a Plea Bargain Agreement. If the matter had proceeded as a murder case, this court would have meted out on him a stiffer sentence.
 25. Going further, this court was mandated to consider the period that he spent in remand while his trial was on going in line with Section 333(2) of the [Criminal Procedure Code](#) Cap 75 (Laws of Kenya).
 26. 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).

27. 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.”

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

29. The Accused person was first arraigned in court on 13th February 2024. He was convicted on 29th July 2024. This was a period that therefore ought to be taken into consideration while computing his sentence.

Disposition

30. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to ten (10) years imprisonment to run from the date of this Sentence.

31. For the avoidance of doubt, the period between when he was first arraigned in court on 13th February 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. It is so ordered.

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

J. KAMAU

JUDGE

