



**Republic v Jandi alias Kibaki & 2 others (Criminal Case 10 of 2021)
[2024] KEHC 13344 (KLR) (28 October 2024) (Sentence)**

Neutral citation: [2024] KEHC 13344 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE 10 OF 2021
JN KAMAU, J
OCTOBER 28, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

DOUGLAS JANDI ALIAS KIBAKI 1ST ACCUSED

SOLOMON SANKALE SOSTI 2ND ACCUSED

DENNIS ANDIKA 3RD ACCUSED

SENTENCE

1. The 1st, 2nd and 3rd Accused persons herein were 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). On 15th July 2024, the Prosecution filed a nolle prosequi in respect of the 2nd and 3rd Accused persons. Having taken into account the 1st Accused person’s request to plea bargain, this court entered a nolle prosequi against the 2nd and 3rd Accused persons in line with Section 82(1) of the Criminal Procedure Code Cap 75 (Laws of Kenya) and effectively discharged them from the proceedings herein.
2. The 1st Accused person entered into a Plea Agreement on the same date of 15th 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.
3. The facts of the case were that on 13th April 2020, Ezekiel Sotsi Momba (hereinafter referred to as the “deceased”) and grandfather to the 1st Accused person was at his home when he realised that the fertilizer he had bought the previous day was partly missing from where he had kept it. He suspected that the 1st Accused person, who he lived with, had stolen it and he informed his son who was also the 1st Accused person’s uncle, Solomon Sangale, about it. Together with Dennis Andika, son to the said



- Solomon Sangale who was also his grandson, they had a discussion at his house on how to deal with the 1st Accused person's unbecoming behavior.
4. The 1st Accused person sneaked from his bedroom fearing that he would be reprimanded by his uncle Solomon Sangale. The discussion ended at 10.00 pm. The said Solomon Sangale and Dennis Andika then left for their house and left the deceased preparing to sleep.
 5. On 14th April 2020, at around 9.00 am, the 1st Accused person went to the house of his grandmother, Florence Ajami and informed her that the deceased had travelled to visit his brother who lived in Kapkenda. He spent the whole day with his cousin Brian Amiani. In the evening, he informed his grandmother that the deceased had not returned and the house was locked. He therefore slept with his cousin.
 6. On 15th April 2020, the 1st Accused person informed his grandmother that he had checked on the deceased and found the house open but he was not there. Later in the day, the 1st Accused person proceeded to the deceased's house together with his cousin and found all rooms open except the 1st Accused's bedroom which was locked from the inside.
 7. They broke the window to the said room and managed to see a body lying down covered with blankets. With the aid of a stick, they removed the blankets and realised it was the deceased. They rushed back and informed their grandmother who also went to the scene. She then informed the Area Chief of the incident who in turn notified police officers from Serem Police Station.
 8. Police officers visited the scene and investigations commenced. The officers noted that there were blood stains on the deceased's bed, he was naked and had visible injuries on the head. They also established that he was killed in his bedroom and dragged to the room where the body lay. They took the body to Vihiga County Referral Hospital.
 9. When the 1st Accused person was arrested, he informed the officers that he had killed the deceased. However, the murder weapon was not recovered. After investigations were completed, the 1st Accused person was charged with the offence of murder.
 10. On 20th April 2020, postmortem was conducted and the doctor formed the opinion that the cause of the deceased's death was intracranial hemorrhage secondary to trauma. The Postmortem Report dated 20th April 2020 was produced as evidence in this court and marked as Exhibit 1.
 11. Having entered into a Plea Agreement, both the State and the 1st Accused person urged this court to sentence the Accused person to three (3) years' probation.
 12. In his mitigation, the 1st Accused person said that he was remorseful for the offence that he committed. He informed the court that at the time of the offence, he was a minor and a grandson to the deceased. He asserted that it was unfortunate that a life was lost. He averred that he was a relative who was also at a loss.
 13. He pointed out that the deceased's family was ready to receive him. He averred that he had been in custody since 2020 and that he had learnt his lesson. He stated that he had saved this court time by plea bargaining on his own volition.
 14. He stated that he was willing to abide by any orders of this court and urged it to be lenient on him and place him on probation.
 15. On its part, the Prosecution noted that at the time of the commission of the offence, the Accused person was a minor and the deceased was his grandfather. They lived together in the same house and the deceased was a breadwinner and provided for him. It lamented that the deceased did not deserve



- to die as he did. It asked this court to look at the injuries that the deceased sustained especially the cut wounds on the head. It asserted that the deceased's family were still bitter for losing their grandfather.
16. It submitted that sentencing was a discretion of the court and urged this court to look at the objectives of sentencing and ensure that justice was not only done but that the same must be seen to have been done.
 17. According to the Pre-Sentence Report of Benard Mwembe, Probation Officer, Vihiga County that was dated 20th August 2024 and filed on 26th August 2024, the Accused person was aged seventeen (17) years. He was a class six (6) pupil at Mudindi Primary School. He was involved in firewood splitting for a living and to support himself in school. He was a Christian. He did not drink alcohol or smoke bhang/cigarettes. He was in good health and had not previously been in conflict with the law.
 18. He admitted to having committed the offence and said that he was remorseful of the unfortunate episode. He attributed it to the deceased's intolerable provocation by his remarks. He felt sad and pained to be associated with the deceased's death which he greatly regretted. He pleaded with this court to exercise leniency and prayed to be considered for a non-custodial sentence to give his life a new meaning. He committed to be a law-abiding citizen henceforth.
 19. His family was ready to welcome him back home and assist him adjust. It was their prayer that he be released on non-custodial sentence. The secondary victims were also not opposed to the 1st Accused person being considered on a non-custodial sentence. They deemed the 1st Accused's conviction to have been a cover up of the main suspects as the deceased's family was a polygamous one which was prone to disputes.
 20. The Local Administration and the Community were surprised at the 1st Accused person's involvement in the crime as he was a quiet, well behaved school-going pupil who had not engaged in bad incidents in his life. They were also not opposed to him being released on a non-custodial sentence as the community was not hostile to him.
 21. The Probation Officer recommended that the 1st Accused person be considered for probation treatment for a period of three (3) years.
 22. 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.
 23. 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.
 24. 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 1st Accused person being reintegrated in the society would be next to impossible as there were possibilities of being harmed.
 25. Killing someone is an abomination in the society. No one should take the law into his or her own hands. Justice not only needed to be done but it had to be seen to be done.



26. Although the 1st Accused person had never been charged with any offence previously prior to the incident and the fact that he had sought leniency, it was clear that he intended to kill the deceased. The nature of the injuries that the deceased sustained showed the malice that the 1st Accused person had at the material time. The deceased must have died a harrowing death as the Accused person attacked him several times with a panga.
27. From the facts that were given in the Pre-Sentence Report, the 1st Accused person killed the deceased who was his grandfather for contemplating to punish him for having taken his fertiliser.
28. The facts of the case pointed to intolerable provocation and lack of anger management on his part. The deceased's death was unwarranted as the fertiliser did not belong to him and the deceased used to take care of him. His behaviour smacked of a spoilt child who did not respect his elders.
29. Having said so, this court noted that the 1st Accused person was a minor at the time he committed the offence. It had the option of placing him on probation as the Probation Office had recommended or to place him in a borstal institution.
30. Section 5 of the *Borstal Institutions Act* Cap 92 (Laws of Kenya) provides as follows:-
- “Before sentencing a youthful offender, a court shall consider the evidence available as to his character and previous conduct and the circumstances of the offence, and whether it is expedient for his reformation that he should undergo a period of training in a borstal institution.”
31. Further, Section 6 of the *Borstal Institutions Act* further states as follows:-
1. Where the High Court or a subordinate court of the first class or a juvenile court is satisfied, after considering the matters specified in section 5 of this Act, that it is expedient for his reformation that a youthful offender should undergo training in a borstal institution, it may, instead of dealing with the offender in any other way, direct that the offender be sent to a borstal institution for a period of three years.
 2.
 - (a). Where it appears to any court other than the High Court or a subordinate court of the first class after considering the matters specified as aforesaid, that a youthful offender should, for his reformation, undergo training in a borstal institution, it may, instead of dealing with the offender in any other way, after recording the same, commit the offender in custody to a juvenile court having jurisdiction in the area, for sentence.
32. As Section 2 of the *Children Act* Cap 141 (Laws of Kenya) defines a "child" to mean an individual who has not attained the age of eighteen years, it was clear to this court that could not place the 1st Accused person beyond his eighteenth (18th) birthday. By the time this court ascertained it there was space in a borstal institution as required in Section 8 of the *Borstal Institutions Act*, there was a risk of him having attained the age of majority or him serving a very short period at the Borstal Institution which would be less than three (3) years that is stipulated in the *Borstal Institutions Act*.
33. Having considered the facts of this case, the 1st Accused person's mitigation, the Prosecution's response thereto, the Pre-Sentence Report, the limitations of the sentence that this court could impose on him and bearing in mind that sentencing was the sole discretion of the court, this court came to the firm conclusion that a sentence of three (3) years' probation was suitable and adequate herein. This will be in addition to the period that he spent in custody since 2020. The court has added this period because



he wasted four (4) years of the court's time when he knew very well that his Co-Accused persons were innocent but caused them to be dragged in the court proceedings.

34. The Accused person appears to have been a callous and calculating person, to kill his own grandfather, take his relatives on a wild goose chase that the deceased had travelled when he already knew that he had killed him and he was decomposing in his own (Accused person's) bedroom and also causing his Co-Accused persons mental anguish as accused persons for over four (4) years. If he were not that he was a minor at the time that he committed the offence, this court would have imposed a very harsh sentence on him. He has been saved by his age. It is hoped that he will reflect on his actions and seek forgiveness from the deceased, his relatives and from God. The court will say no more on this.

Disposition

35. Accordingly, it is hereby directed that the 1st Accused person be and is hereby sentenced to three (3) years' probation to run from the date of this Sentence.
36. It is hereby directed that the 1st Accused person be and is hereby released from custody forthwith unless he be held for any other lawful cause to commence his probation sentence forthwith.
37. Orders accordingly.

DATED AND DELIVERED AT VIHIGA THIS 28TH DAY OF OCTOBER 2024

J. KAMAU

JUDGE

