



**Republic v Kamande & 2 others (Criminal Case E003 of 2023)
[2024] KEHC 14961 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14961 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL CASE E003 OF 2023
FN MUCHEMI, J
NOVEMBER 28, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

JOSEPH NJOGU KAMANDE 1ST ACCUSED

JOSPHAT MBURU WAITHERA 2ND ACCUSED

ALEX KIONGO NGUGI 3RD ACCUSED

RULING

1. The 2nd accused person pleaded guilty to the lesser charge of manslaughter following signing of the plea agreement that was filed in court on 12th September 2024. According to the charge, the offence was committed on the 3rd day of June 2019 at Kiratina Village, Ruiru Sub-County of Kiambu County.
2. The 2nd accused person admitted killing the deceased by beating him to death in the company of others not before the court at Kona village Gatongora location, Ruiru Sub County within Kiambu County.
3. The 2nd accused person was said to be a member of a group called Kainuke. On the fateful day, the 2nd accused person in the group of forty people, armed themselves with crude weapons such as rungu, sticks, pangas, stones and spades and headed to Kona village to riot against the construction of a sewage line by the Chinese. The said group demanded to be paid for the labour by the Chinese without working. The manual work was being carried out by a group called Kibendera Self Help Group. The deceased, a member of the self-help group was headed to the site where the members assembled for duty but was caught unawares in the scuffle. The deceased tried to plead with the Kainuke group to let him go but they declined and he was thus beaten senselessly until he fainted. The deceased later succumbed to the injuries in hospital on 5th June 2019.



4. The defence counsel Ms Wambui gave mitigation on behalf of the 2nd accused to the effect that he was remorseful. He said that he has a wife, two children and an old mother who depended on him for a living. The said family was subjected to lack of means of survival for the time he was in remand. The 2nd accused person further pleaded for leniency and urged the court to give him a non-custodial sentence and further stated that he has been in remand since 5th June 2019 when he was arrested.
5. The prosecution stated that the accused is not a first-time offender as he was convicted of a criminal offence and was sentenced to serve under Community Service Orders Programme at Gatong'ora chief's camp. The prosecution further stated that the 2nd accused person seemed to be denying the said offence at that late stage as was being interviewed by the probation officer who prepared the presentence report. The prosecution objected to the court giving a non-custodial sentence as the victim's family was said to be is still suffering trauma and had expressed their of retaliation in the event the 2nd accused was released to the community The prosecution counsel said that the 2nd accused person is a member of a gang in the area that is severely feared by the public. The prosecution urged the court to impose a custodial sentence that is deterrent enough to serve as a warning to would-be offenders.
6. The pre-sentence report dated 8th November 2024 was to the effect that the 2nd accused is not a first time offender as he has previously convicted and sentenced to serve under Community Service Orders at Gatong'ora chief's camp. The report further provided that the victim's family expressed fear of the gang retaliating against them since they lived in the same village with the 2nd accused. The victim's family preferred an imprisonment term for both deterrence and for their safety. Furthermore, the report recommends that the court takes into consideration the period the offender has spent in remand.
7. I have considered the factors set out in Judiciary Sentencing Policy in regard to sentencing and mitigation of the 2nd accused person. In my view, a non-custodial sentence would not be appropriate having regard to the circumstances of the offence. An innocent life was lost in the name of squabbles which could have been sorted amicably either between the parties or with the Chinese company that had hired casual labour from one group as opposed to the other. A deterrent sentence would be appropriate in this case for it will discourage senseless killings in the community and preserve human life going forward. However this court considers that by the act of pleading guilty to the offence, the 2nd accused person saved the precious time of the court which factor this court takes into consideration and which mitigates the sentence.
8. The record shows that the accused has been in custody since the day of his arrest being 5th June 2019. Therefore, pursuant to Section 333 of the Criminal Procedure Code, the court will take into account this period while sentencing.
9. The 2nd accused is hereby sentenced to serve thirteen (13) years imprisonment to commence from the date of arrest the 5th June 2019.
10. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 28TH DAY OF NOVEMBER 2024.

**F. MUCHEMI
JUDGE**

