



**Republic v Zadock (Criminal Case 3 of 2022)
[2024] KEHC 14918 (KLR) (26 November 2024) (Sentence)**

Neutral citation: [2024] KEHC 14918 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE 3 OF 2022
JN KAMAU, J
NOVEMBER 26, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

RUFUS AMWAI ZADOCK 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). The Prosecution called a total of three (3) witnesses. On 31st January 2024, this court found him to have had a case to answer and put him on his defence. When the matter came up for defence hearing on 25th April 2024, he indicated that he wished to proceed with a Plea Bargain Agreement. He entered into a Plea Bargain Agreement on 10th 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 31st May 2015, at around 1500hours, he picked a quarrel with his father Zadock Inzekele (hereinafter referred to as the “deceased”) at his (the deceased’s) compound. He took a rungu and assaulted the deceased by hitting him all over the body. When one Jeredina Afande, the deceased’s wife and the mother to the Accused person arrived at home at around 1540hours, she met the Accused person who informed her that he had assaulted the deceased.
3. She also saw the deceased lying in pain on the ground outside the house. Blood was oozing from his left leg. The deceased informed her that the Accused person had assaulted him. She informed one Jacinta Afande, her daughter-in-law about the incident. She later took the deceased to Vihiga County Referral Hospital where he was pronounced dead on arrival.
4. On the same day, one Esther Kasiti, daughter-in-law to the deceased informed the Area Assistant Chief, Alice Kusa, about the incident. The Area Assistant Chief then notified police officers from Luanda



- Police Station of the occurrence. They visited the scene and arrested the Accused person who was within the homestead.
5. The police commenced investigations and interrogated the Accused person. He showed them the rungu that he had kept inside his house. The same was recovered and kept as exhibit.
 6. There was evidence of dying declaration made by the deceased to his wife which pointed to the guilt of the Accused person being the person that assaulted the deceased leading to his demise. He was then charged with the offence of murder.
 7. On 3rd June 2015, a post mortem was conducted. The cause of the deceased's death was determined to have been multiple injuries secondary to blunt trauma. The Postmortem Report dated 3rd June 2015 was produced as evidence in this court and marked as Exhibit 1.
 8. Having entered into a Plea Agreement, the State urged this court to sentence the Accused person to fifteen (15) years imprisonment while he sought that he be sentenced to five (5) years imprisonment.
 9. In his mitigation, the Accused person stated that he was remorseful and regretted the incident. He urged this court to mete upon a non-custodial sentence so that he could take care of his family who depended on him before he was charged. He also asked this court to consider the period from 5th June 2015 that he spent in custody while the trial was going on.
 10. On its part, the Prosecution told this court that the secondary victims and the community was still hostile to the Accused person. His mother was apprehensive that he would kill her if he was released from prison. He stood excommunicated from the society. It urged this court to mete upon him a custodial sentence in the interest of justice and for his own safety.
 11. According to the Pre-Sentence Report of Fanny Masinde, Probation Officer, Vihiga County, dated 9th August 2024 and filed on 26th September 2024, the Accused person was fifty-six (56) years old. He attended Ebusirsi Primary School from class one (1) to eight (8) when he sat for his Kenya Certificate of Primary Education (KCPE). He proceeded to Esabwali Polytechnic and enrolled for masonry. He later left home and went to Timboroa in search for greener pastures. He stated that he married and sired one child but separated due to infidelity. He did not divulge any information about his past.
 12. He admitted the charge and alleged that there was a misunderstanding between him and the deceased. He asserted that on the material day which was on a Sunday, his father asked him why he had not gone to Church and he told him that he was tired after a week-long work. An argument ensued between them. At the time, the deceased was drinking hot porridge. He took the porridge and poured it on him. He then removed his t-shirt and rushed to his house to get a rungu. His father came out with a circumcision knife. He struck his father five (5) times on the face. The deceased was rushed to Mbale hospital where he succumbed to the injuries.
 13. The Accused person's attitude towards the offence was indifferent. He preferred being incarcerated to being given a non-custodial sentence.
 14. The secondary victims who included, his mother and younger brother stated that he had a queer character and could not be understood. They pointed out that whenever he was present, there was fear of something bad happening. They did not want anything to do with him and prayed that he be given a deterrent custodial sentence and never be released to them.
 15. His mother added that the clan did not want to lay their eyes on him and she feared for her life as she may be his next victim. His cousin said that he behaved like an animal and was not fit to associate with



- the family. The Probation Officer was of the view that the family was not entirely sincere about the circumstances leading to the crime.
16. According to the Area Chief Ebusirasi location, the community was very hostile and unforgiving. He feared that if the Accused person was released, he would be lynched on the same day. He said that the Accused person had been away from home for the last twenty-five (25) years and that he had been threatening his parents. He stated that at one time, he was imprisoned for an unknown offence and was involved in the 2007 skirmishes.
 17. His neighbors reported that he was dangerous, had an awful character and should not be released back to the community for fear that if he was released, he might eliminate his mother. From the cultural perspective, the offender stood excommunicated from the community.
 18. The Probation Officer opined that the offender was not a suitable candidate to be released to the community. She recommended that the court deems it fit to deal with him otherwise.
 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 explains 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. According to the Pre-sentence Report, the Accused person did not appear to have been remorseful of the offence that he committed. He insinuated that he acted in self-defense. He waived his right to a full trial and could not be heard to say that he only entered into the Plea Bargain Agreement to escape the death sentence that could have been meted upon him if the court found him guilty and convicted him of the offence of murder. He killed his own father. The deceased must have died a harrowing death as he hit him severally with a rungu.
 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 fifteen (15) 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 the Accused person 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 *Ahamad Abolfathi Mohammed & another v Republic* [2018] eKLR.

29. The Accused person was arrested on 31st May 2015. He was convicted on 10th July 2024. Although he was granted bond, he did not seem to have posted the same. He therefore spent eight (8) years, six (6) months and twenty- three (23) days in custody before his sentence. 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 fifteen (15) years imprisonment to run from the date of this Sentence.

31. For the avoidance of doubt, the period from when he was arrested on 31st May 2015 until 25th November 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. Orders accordingly.

DATED AND DELIVERED AT VIHIGA THIS 26TH DAY OF NOVEMBER 2024

J. KAMAU

JUDGE

