



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Amuchama (Criminal Case E009 of 2021)
[2023] KEHC 3566 (KLR) (29 March 2023) (Sentence)**

Neutral citation: [2023] KEHC 3566 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE E009 OF 2021
JN KAMAU, J
MARCH 29, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

ELIAS MUYELA AMUCHAMA ACCUSED

SENTENCE

1. The accused person was charged with the offence of murder contrary to Section 303 as read with Section 204 of the *Penal Code* Cap 63 (Laws of Kenya) He entered into a Plea Bargaining Agreement and consequently this court convicted him of the offence of Manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*.
2. From the facts of this case, it was evident that he acted out of self-defence. On 30th September 2021 at 17 hours he was going home when the deceased attacked him with a panga. The Accused person ran away but the deceased ran after him and caught up with him.
3. The deceased aimed a knife at him which missed him with a whisker. The accused dispossessed the deceased of the panga and cut him on both his hands and head then ran away.
4. He left the deceased alive and surrendered himself to Ebukamga police station. He suspects that members of the public who joined the fray may have cut the deceased noting his notoriety in the village.
5. The court has perused the Pre- sentence Report of Michael Matekwa Probation officer Vihiga County office dated 22nd March 2023 and filed on 23rd March 2023 and noted that the accused person was remorseful and regrets the incident. His family had engaged with the local administration that came to an agreement that in line with their culture, they would sell their land and relocate to another area.



6. The local administration had embarked on looking for buyers to purchase the land. The deceased's family were bitter and wanted nothing to do with the accused person and wished that the accused person be imprisoned for a short while and relocate from the area.
7. The deceased's family admitted that the deceased was generally not a good person and that it was not uncommon for him to be abusive and troublesome. They however, wished that the accused person should have sought protection of the law. The community confirmed that the deceased was problematic and would go around the village insulting people and brandishing either with a panga or knife and that there were many incidents where he used crude weapons to attack people.
8. One neighbour likened the incident as a David and Goliath moment and stated that the Accused person was lucky to escape from the claws of the deceased. The community did not object to the accused person being given a non-custodial sentence on condition that the relocated to minimize contact with the family.
9. The Pre-Sentence Report painted the accused person as humble, polite, focused and hardworking. His family prayed for leniency while the deceased's family wished that justice be served. The accused person indicated that he was remorseful and that he was a first offender. He asked for a non-custodial sentence. The prosecution asked for imprisonment of ten (10) years while the Probation officer asked for a probation of three (3) years.
10. This court has carefully considered the facts of this case and the mitigation of both the Accused person and the deceased and noted that the accused person's attack on the deceased was not pre-meditated. He was acting in self-defence.
11. The deceased was a person who walked around with crude weapons attacking people on the roads. The deceased was attacked at 1500 hours and it was only at 1800 hours that the Area Chief took the deceased to the hospital in his motor vehicle where the deceased succumbed to his death. This was as per the Pre- Sentence Report. It was therefore not clear if the deceased died as a result of the cut wounds or the excessive bleeding as he was taken to hospital three (3) hours after the incident. This was unfortunate incident. A life was lost but it could not be all be blamed on the accused person wholly as he was defending himself.
12. Whereas the deceased family wanted justice and the accused person the prosecution counsel together with the Probation Officer also wished to see the accused person punished whether it was way of a custodial and non-custodial sentence, this court took the firm view that it would be punitive to put the Accused person through punishment when it was debatable if the deceased would have survived if he was taken to hospital on time gave this court great difficulties. However, as a life was lost and the deceased would not have sustained the injuries had the accused person not attached him with a panga, and the deceased's family's feelings ought to be considered this court hereby sentences the accused person to one (1) week probation. Orders accordingly.

DATED AND DELIVERED AT VIHIGA THIS 29TH DAY OF MARCH, 2023.

J KAMAU

JUDGE

