



**Republic v Shekhule (Criminal Case E114 of 2021)  
[2023] KEHC 17772 (KLR) (25 May 2023) (Sentence)**

Neutral citation: [2023] KEHC 17772 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE E114 OF 2021  
SC CHIRCHIR, J  
MAY 25, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JOAB SHIKANDA SHEKHULE ..... ACCUSED**

**SENTENCE**

1. The accused herein was initially charged with murder contrary to section 203 as read with section 204 of the [Penal Code](#).
2. In the course of the proceedings, the parties entered into a plea bargain and finally came up with a plea bargain agreement in which, the accused agreed to plead guilty to the lesser charge of manslaughter.
3. On May 22, 2023, the accused took plea on the substituted charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code.
4. The particulars of the charge were that on April 17, 2021 at Musambiri village, Muyundi Sub-location of Butere Sub county, Kakamega County, unlawfully killed Kevin Shikanda. He pleaded guilty to the charge.

**Accused's submissions**

5. On mitigation the accused has submitted that he is a sole provider of his 3 children and an old parent; that he is a first offender and he is remorseful. He further submits that he has mended his ways, while in custody. That he is a person of good character despite what had happened. The accused prays for non- custodial sentence.



### **Prosecution's Submission**

6. It is the prosecution's submission that the accused does not deserve a non-custodial sentence considering that he is the author of his own misfortune. The prosecution further points out that evidence from the witnesses show that the victim was in a different location and the accused went looking out to him. She further points out he comes from a dysfunctional family, as there is evidence that his 2 wives have ran away.
7. The prosecution further submits that the accused has been described by some witnesses as lethal, as he is unable to control his temper. The prosecution urges the court to ignore the recommendation in the probation report which paints a picture of an otherwise good person despite the crime he has committed.

### **Pre-sentencing Report.**

8. The accused is described as hard working, well mannered and responsible. The father considers him as the only child who could take care of him in his old age. He blames the killing of his other son (the Deceased) on fate. The community also speak well of him and hope that he can be allowed to be back in the community. The Probation officer says that the Accused is remorseful. He finally recommends that the accused be sentenced to serve probation sentence.

### **Determination**

9. Punishment is supposed to be retributive, deterrent, rehabilitative, restorative, protective of community and to act as a show of denunciation of the criminal conduct. (see paragraph 4.1 Page 15 of the Kenya Judiciary Sentencing policy guidelines.) . The court is supposed to have in mind the aforesaid purposes when considering an appropriate sentence.
10. In sentencing the offender, the court is also required to consider the following factors.
  - (a) Gravity of the offence- In the absence of aggravating circumstances, custodial sentence should be avoided in respect to misdemeanors
  - (b) Criminal history of the offender – first offenders should be considered for non-custodial sentence, in the absence of other factors impinging on the suitability of such sentence.
  - (c) Character of the offender – remorseful offenders, and who are ready for rehabilitation may benefit from a non-custodial sentence
  - (d) Protection of the community: where there is evidence that the offender is likely to pose a threat to the community a non- custodial sentence may not be appropriate.
  - (e) Responsibility of the offender to third parties: where vulnerable persons depend on him or her, if in the light of the gravity of the offence no justice will be occasioned a non- custodial sentence may be considered ( paragraph 7.9 of the policy guidelines)
11. The accused and the deceased were half – brothers. From the probation report there seems to have been a long-standing feud between the two which went unresolved.



12. On the particular circumstances that eventually led to the death of the deceased, it emerges that the two quarreled over alleged issues of land and/ or a fight over a girlfriend or wife. However, from the from the probation report, the provocation was not so extreme to warrant such a deadly reaction from the accused. The deceased died of hemorrhagic shock and multiple cut wounds. It is indicative of the fact that the attack was vicious. I agree with the prosecution counsels' observation that the accused is a man of violent temper and he may be still be a danger to the society if given a non-custodial sentence. I consider this to be an aggravating factor within the context of the sentencing guidelines. He needs to be put away for a while, and while away, he will also have time to do some soul searching on some of the implications of his temperamental behavior. A non-custodial sentence is therefore not suitable.
13. The accused in this case his however, a first offender. He has submitted that he is remorseful and has pleaded guilty, thought not at first instance. I have also considered the fact that the accused has 3 young children, and an aging father under his care All the above are mitigating circumstances as per paragraph 23.8 of the sentencing policy guidelines.
14. The charge of manslaughter attracts a life sentence. Taking both the mitigating and aggravating factors set out above, I hereby sentence the Accused to 7 years in prison.
15. Further pursuant to the provisions of section 333(2), the sentence shall run from the date of his arraignment in court, that is April 29, 2021.
16. The Accused has a Right of appeal, against the sentence, within 14 days.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAKAMEGA THIS 25<sup>TH</sup> DAY OF MAY, 2023**

**S. CHIRCHIR**

**JUDGE**

**in the presence of:-**

**Court Assistant;- Erick**

**Accused- present**

**Mr. Otysieno holding brief for Ms Aligula for the Accused**

**Ms. Odumba for the State.**

