



REPUBLIC OF KENYA



**Republic v Ismael (Criminal Case E007 of 2021)
[2023] KEHC 26715 (KLR) (20 December 2023) (Sentence)**

Neutral citation: [2023] KEHC 26715 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE E007 OF 2021
JN KAMAU, J
DECEMBER 20, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

HASSAN RIDWARO ISMAEL ACCUSED

SENTENCE

1. The accused person 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). He entered into a plea agreement on October 30, 2023 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 the night of September 13, 2023, the Suleiman Gidamani (Deceased) arrived home and found the Hassan Ridwaro Ismael (accused) who was his brother at Gavinoni village in Gimarakwa Sub location. The deceased was drunk by the time he arrived home. He picked a quarrel with the Accused person. The quarrel persisted and the accused person picked a jembe with a wooden handle and without any justification inflicted fatal injury on the deceased.
3. The deceased person died on the spot. His body was taken to Vihiga County Referral Hospital Mortuary. A post-mortem report was done on September 21, 2021 where it was established that he died as a result of deep cut wounds. The Post-mortem Report dated September 21, 2021 was produced and marked as exhibit 1.
4. The scenes of crime officer visited the scene and compiled a certificate after taking photographs of the deceased. The certificate and photographs were produced and marked as exhibit 2A and 2B(a) – (c) respectively. The *jembe* that was used to inflict the fatal injury was also recovered. The same was produced and marked as exhibit 3.



5. Having entered into a plea agreement, the accused person urged this court to sentence him to one (1) year non-custodial sentence. On its part, the State recommended a sentence of seven (7) years imprisonment.
6. In his mitigation, he asked this court to rely on the pre-sentence report of Fanny Masinde, Probation Officer, Vihiga County that was dated and filed on December 19, 2023 which had indicated that he was suitable for a non-custodial sentence. He pointed out that he came from a humble background and that he did casual jobs to take care of his elderly mother.
7. He said that he was remorseful and regretted having committed the offence. He added that he was ready to amend his anger issues. It was his assertion that he was a first offender with no previous records and asked this court to mete upon him a non-custodial sentence.
8. The state confirmed that there were no previous records and urged this court to treat him as a first offender. However, it urged this court to strike a balance between his mitigation and the fact that an innocent life was lost from actions that were not warranted. It emphasised that he had an opportunity to restrain himself from using excessive force but failed to do so.
9. It therefore urged this court to mete upon him a deterrent, proportionate and reasonable custodial sentence bearing in mind that an innocent life was lost.
10. According to the aforesaid pre-sentence report, the deceased had threatened to kill the accused person and his mother. His version was that the deceased entered his room from an opening in the ceiling of his house and found him in the sitting room and told him that he would kill him. He pushed him and fell on a jembe. It was his assertion that he never intended to kill the deceased.
11. His family stated that the deceased was a polite person who minded his business. It said that the deceased used to use alcohol and drugs and that he was the one who provoked the Accused person. It prayed for leniency and urged this court to mete out a non-custodial sentence.
12. The local administration also said that the death was not intentional. The assistant chief said that the accused person was a law abiding citizen and was not a threat to the public and community. The community and local administration also urged this court to mete out to him a non-custodial sentence.
13. 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.
14. 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.
15. The sentence also had to be one that was hinged on retributive justice for the secondary victims. Justice not only needed to be done but it had to be seen to be done.
16. 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.



17. According to the post-mortem report, the deceased had intracranial haemorrhage due to trauma and suffered deep cut wounds. This could not have been caused by falling on the jembe as the accused person had narrated to the Probation Office. The deep cut wounds were consistent with the facts that were advanced by the prosecution herein.
18. Whereas the accused person's version of what transpired was not plausible and that he used excessive force to retaliate against the deceased, it did appear from the pre-sentence report that the deceased was a problematic person and he was causing chaos to everyone he came across. This was therefore a case of provocation.
19. It would be unfair to punish the Accused person severely as he was minding his own business when the deceased attacked him in his own house. He was remorseful and regretted the offence. His family, community and local administration had urged this court to be lenient on him. He had also been in custody since September 29, 2021. He had been in custody for over two (2) years. The pre-sentence report was also positive.
20. Having considered the facts of this case and the accused person's mitigation, this court to the firm conclusion that a non-custodial sentence of three (3) years' Probation would be suitable and adequate herein for him to learn about anger management issues.
21. Accordingly, it is hereby directed that the accused person be and is hereby sentenced to three (3) years a probation to run from today.
22. Orders accordingly.

DATED AND DELIVERED AT VIHIGA THIS 20TH DAY OF DECEMBER 2023

J. KAMAU

JUDGE

