



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Muhalia (Criminal Case 9 of 2021)
[2025] KEHC 214 (KLR) (22 January 2025) (Sentence)**

Neutral citation: [2025] KEHC 214 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE 9 OF 2021
JN KAMAU, J
JANUARY 22, 2025**

BETWEEN

REPUBLIC STATE

AND

RACHEL MUHALIA ALIAS DEINA ACCUSED

SENTENCE

1. The Accused person was convicted of the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code Cap 63 (Laws of Kenya) on 29th October 2024. The same had been reduced from the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code that she had initially been charged with. The court then directed that a Pre-Sentence Report be filed to assist it in meting out an appropriate sentence.
2. A Pre-Sentence Report by Vivian Sabala Probation Officer Vihiga dated 20th November 2024 was filed on even date. In the said Pre-Sentence Report, the Accused person who was aged sixty six (66) years denied having killed the deceased. She prayed that the matter be withdrawn or that she be given non-custodial sentence to enable her take care of her grandchildren. She was a mother of seven (7) adult children. She was a mother of seven (7) adult children who were all employed.
3. The Pre-Sentence Report indicated that she did not relate well with her siblings as they were against her trade of procuring abortion to women. They urged this court to mete upon her a custodial sentence for her to reform and learn lessons not to engage in the illegal business again.
4. The decease's family was still traumatised by the deceased's death. They were bitter and did not want to engage with the Accused person. They prayed that she be punished to the fullest extent to deter others from committing such an offence.
5. The Assistant Chief pointed out that the Accused person was rescued from lynching by members of the public by the police. He was aware of her illegal trade of procuring abortion especially to University



- students. He averred that she had been arrested several times but she was always released by the police. He said that the community was angered when she was released on bond. The local administration and the community also prayed that she be given a custodial sentence to deter her and other would-be offenders from committing such an offence.
6. The Probation Office opined that the Accused person was not remorseful and that she was a bad person and a pretender who hid behind her water business. It did not recommend a non-custodial sentence.
 7. In her mitigation, the Accused person denied that she committed the offence. However, her advocate asked this court to give her a non-custodial sentence due to her advanced age of sixty six (66) years, the fact that it appeared that the deceased's family knew what she (the Accused person) was engaged in and the fact that she use to take care of her yond grandchildren from her water vending business. The advocates also asked this court to take into account the period that she spent in custody from the time of her arrest to the time of being released on bond and again the period from when she was convicted to the time of her sentencing.
 8. On its part, the Prosecution pointed out that the Pre-Sentence Report had indicated that the Accused person was not suitable for community rehabilitation. It pointed out that she was still not remorseful as she continued denying the offence despite having been convicted of the offence. It added that the secondary victims were still bitter and traumatised by the death of their first born child and the burial dispute that arose after her death. It asserted that the deceased's family did not wish to interact with the Accused person. It urged this court to mete upon her a deterrent sentence so as to deter her and other would-be offenders from committing a similar offence.
 9. 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.
 10. 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.
 11. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of the offence at the time of sentencing the offender, chances of the offender being reintegrated in the society would be next to impossible as there were possibilities of being harmed.
 12. In its decision of 29th October 2024, this court found that there was actus rea and/or unlawful killing of the deceased by the Accused person herein but without mens rea and/or intention to kill her. Although she had to be held liable for the deceased's death, this court had to consider that the death was unintentional.
 13. It was evident from the Pre-Sentence Report that the Accused person was engaged in the illegal trade of procuring abortion. Her family, community and local administration had sought that the court metes out a stiff sentence. It did appear to this court that she had engaged in this trade for a long time but always went unpunished after being released by the police. In view of the rage of the deceased's family, local administration and community, this was not a suitable case to mete out a non-custodial sentence, her advanced age notwithstanding. If the court imposed a non-custodial sentence, her security could not be guaranteed. Reintegration in the society would also be next to impossible.



14. It was also clear from her assertions during the sentencing hearing that she completely denied of having committing the offence and was therefore likely to re-offend if she was put on non-custodial sentence as her counsel had sought.
15. Accordingly, having considered the facts of this case, her 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 five (5) years imprisonment was suitable and adequate.
16. 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).
17. 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).
18. 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.”
19. The requirement under Section 333(2) of the Criminal Procedure Code was restated by the Court of Appeal in *Ahamad Abolfathi Mohammed & Another vs Republic* [2018] eKLR.
20. The Accused person was first arraigned in court on 2nd September 2020. It was not clear from the proceedings when exactly she was arrested. She was granted bond on 17th September 2020. The same was approved on 15th October 2020. As there was nothing to show when she was released from custody, this court took that date to have been 15th October 2020. The court cancelled her bond when it convicted her on 29th October 2024. The period that he spent in custody during trial and before sentencing therefore ought to be taken into consideration while computing his sentence.

Disposition

21. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to five (5) years imprisonment to run from the date of this Sentence.
22. For the avoidance of doubt, the period between September 2, 2020 and 15th October 2020 and between October 29, 2024 and January 21, 2025 be and is hereby taken into account while computing her sentence in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).



23. Orders accordingly.

DATED AND DELIVERED AT VIHIGA THIS 22ND DAY OF JANUARY 2025.

J. KAMAU

JUDGE

