



**Republic v Muhando (Deceased) & another (Criminal Case E005 of 2021) [2025] KEHC 222 (KLR) (21 January 2025) (Sentence)**

Neutral citation: [2025] KEHC 222 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL CASE E005 OF 2021  
JN KAMAU, J  
JANUARY 21, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**NAAMAN MAI MUHANDO (DECEASED) ..... 1<sup>ST</sup> ACCUSED**

**DORAH AYUKO MUHANDO ..... 2<sup>ND</sup> ACCUSED**

**SENTENCE**

1. The 1st Accused person died before the trial was concluded. The trial then proceeded against the 2nd Accused person only. She was convicted of the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* Cap 63 (Laws of Kenya) on 29th October 2024. 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 Mariam Korir Probation Officer Vihiga dated 13th November 2024 was filed on 13th December 2024. In the said Pre-Sentence Report, the 2nd Accused person blamed the deceased for having stolen their chicken and using offensive language against her mother. She denied having committed the offence and insisted that the deceased was killed by a mob. On the other hand, the deceased’s family and the neighbours blamed her and her deceased brother for having killed the deceased. Inquiries by the Probation Officer confirmed that there was no mob justice in this matter.
3. A further perusal of the said Pre-Sentence Report showed that the 2nd Accused person had no previous criminal history. She was therefore a first offender. She urged this court to give her a lenient sentence as she had a young family and was a breadwinner. Her family asked this court to give her a non-custodial sentence to enable her take care of her school-going children.
4. The deceased’s family acknowledged that the deceased was a drunkard but were emphatic that he did not need to die in the manner that he did, in his own house. It regretted the huge void that was



- occasioned by his demise and pointed out that the stolen chicken was not recovered in his house. It bore a lot of resentment against the 2nd Accused person for having killed him.
5. The local administration explained that the deceased was a petty criminal and a drunkard who was always beaten by the community for his behaviour. It, however, acknowledged that he did not deserve to die as he ought to have been charged in court for the offence. It vouched for the 2nd Accused person's good conduct and left the matter in the court's hands. Together with the community, it, however, asked this court to mete upon her a lenient sentence.
  6. The Probation Office opined that although the 2nd Accused person's family and the local administration had vouched for her good conduct, she had not expressed remorse and was therefore not a good candidate for community rehabilitation. It left the matter in the court's hands to mete out an alternative lenient sentence subject to the court's discretion.
  7. In her mitigation, the 2nd Accused person stated that she was very remorseful of what befell the deceased. She averred that she had two (2) children who were both girls, aged thirteen (13) and ten (10) years and that they solely depended on her. She said that her father was old, partially blind and suffering from arthritis and that her mother was disabled, bedridden and could not walk. She added that her family had also suffered a lot having lost the 1st Accused person during the pendency of this trial. She therefore sought leniency and a non-custodial sentence noting the circumstance, the deceased met this death.
  8. The Prosecution pointed out that the 2nd Accused person was not remorseful as she still denied having committed the offence. It stated that the secondary victims prayed for a deterrent sentence by punishing her to the fullest as they were still traumatised by the death of their loved one. It also sought a custodial sentence as had been proposed by the Probation Officer in the Pre-Sentence Report which indicated that she was not fit for community rehabilitation.
  9. Notably, sentencing is one of the most intricate aspects of the 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. It was not lost to this court that the deceased's family still harboured a lot of resentment against the 2nd Accused person.
  12. Although the 2nd Accused person had never been charged with any offence previously prior to the incident and the fact that she had sought leniency after conviction, it was clear that she and her deceased brother intended to inflict grievous harm to the deceased. It was immaterial that they did not intend to kill him.



13. Notably, Section 206 of the *Criminal Procedure Code* Cap 75 (Laws of Kenya) stipulates as follows:-

“Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances-

1. An intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not (emphasis court);
2. Knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused (emphasis court).”

14. Witnesses testified how the 2nd Accused person and his deceased brother beat the deceased until he defecated on himself. They testified how they tied him to his bed and beat him all over the body. They did not stop beating him even after neighbours asked them to stop and instead take him to the police.
15. The Postmortem Report showed that he had swelling on the front and back of trunk, bleeding under the side of the scalp and under brain, the brain was internally swollen, neck bone fracture and extensive soft tissue injuries on the trunk, upper and lower limbs. The extensive injuries all over his body and the fact that he did not die immediately were evident that he suffered greatly before he died.
16. The nature of the injuries that he sustained showed the malice that the 2nd Accused person and his deceased brother had at the material time. The 2nd Accused person’s version that the deceased was beaten by a mob was negated by independent inquiries by the Probation Officer.
17. It was immaterial that the 2nd Accused person and his deceased brother may not have intended to kill the deceased. However, the nature of the injuries that led to his death amounted to grievous harm. The 2nd Accused person and his deceased brother unlawfully took the law into their own hands and caused his death. They ought to have taken him to the police to be charged with theft of the chicken, if at all. The fact that he was a thief and a drunkard was not a reason for him to have undergone such a harrowing death.
18. It was evident from the Pre-Sentence Report that the 2nd Accused person was not remorseful. As she did not appear to see the wrong that she did, this court agreed with the Probation Office that she was not a suitable candidate to be given a non-custodial sentence. She went overboard in “disciplining” the deceased. The facts of the case pointed to poor judgment. She was indifferent to having caused the deceased’s death. This showed that she did not consider taking the law into her hands as a serious issue and was likely to re-offend in the future.
19. A deterrent sentence was therefore most suitable herein to deter her and other would-be offenders from committing a similar offence. The sentence also needed to be retributive. The deceased’s family ought to feel that the perpetrator of their kin’s death paid for his death somehow. It was immaterial that the 2nd Accused person had young children and was the sole breadwinner. Justice not only needed to be done but it also had to be seen to be done.
20. 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 five (5) years imprisonment was suitable and adequate. This sentence herein was influenced by this court’s struggles of the circumstances of the



case which in its mind, bordered between murder and manslaughter. It was an “illegal discipline” that went overboard. It is what could be referred to as a lesser degree of murder.

21. This court’s decision was also influenced by the fact the Accused person was left to shoulder the burden of this crime after her brother, the 1st Accused person died during the pendency of this trial.
22. Going further, this court was mandated to consider the period the Accused person spent in remand while his trial was ongoing in line with Section 333(2) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya).
23. 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).

24. 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.”

25. The requirement under Section 333(2) of the *Criminal Procedure Code* was restated by the Court of Appeal in *Abamad Abolfathi Mohammed & Another vs Republic* [2018] eKLR.
26. The 2nd Accused person and her deceased brother were first arraigned in court on 15th September 2021. It was not clear from the proceedings when exactly they were arrested. Be that as it may, their application for bond was granted by Amin J (as she then was) on 16th December 2021. The 2nd Accused person’s bond was approved on 7th January 2022. She was released on bond on 10th January 2022. This court cancelled her bond on 29th October 2024 after convicting her of the offence. She has been in custody since. The periods that she spent in custody during trial and before sentencing therefore ought to be taken into consideration while computing her sentence.

## Disposition

27. Accordingly, it is hereby directed that the 2nd Accused person be and is hereby sentenced to five (5) years imprisonment to run from the date of this Sentence.
28. For the avoidance of doubt, the period between September 15, 2021 and January 9, 2022 and October 29, 2024 and January 20, 2025 be and are hereby taken into account while computing her sentence in line with Section 333(2) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya).
29. Orders accordingly.

**DATED AND DELIVERED AT VIHIGA THIS 21<sup>ST</sup> DAY OF JANUARY 2025**



**J. KAMAU**  
**JUDGE**

