



REPUBLIC OF KENYA



**Republic v Munyendo (Criminal Case E015 of 2023)  
[2025] KEHC 2056 (KLR) (17 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 2056 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE E015 OF 2023  
AC BETT, J  
FEBRUARY 17, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**SIMON MUSUNGU MUNYENDO ..... ACCUSED**

**SENTENCE**

1. The 1<sup>st</sup> Accused Simon Musungu Munyendo who was initially charged with the offence of murder contrary to section 203 as read with Section 204 of the [Penal Code](#) entered into a Plea Agreement with the State and pleaded guilty to the offence of manslaughter.
2. The particulars of the offence were that on the 18<sup>th</sup> March 2023 at Makunga Location, he unlawfully killed Herbert Okalo Wangatia. The brief facts are that on the material date the deceased who was in company of his co-Accused and another person not before the court met the deceased with whom they had an existing grudge, along a path. A fight ensued during which the three persons viciously attacked the deceased. The Accused was seen cutting the deceased with a slasher.
3. As the result of the assault, the deceased suffered fatal injuries. A post-mortem was done which ascertained the cause of death to be intracranial pressure secondary to blunt force trauma following assault.
4. The Accused pleaded guilty to the offence and after confirming the facts as true, a plea of guilty was entered in respect of the Accused. The court then called for a pre-sentence report to assist it in the sentencing process.
5. In mitigation, the Accused, through his Advocate Mr. Matete expressed remorse. He said that he regrets his action that led to unintended consequences. He submitted that he was a student in Form 3 and eager to complete his studies. He averred that he also sustained injuries during the incident and at



the age of 20 years had a bright future. Additionally, the offence led to involuntarily relocation of his family. The Accused said that he also supported his family. He pleaded for leniency.

6. On its part, the prosecution submitted that the Accused is a first offender and that although the Accused said that he acted in self defence, the retaliation was vicious and so the court should consider a custodial sentence that is proportionate to the offence.
7. According to the pre-sentence report, despite being a student, the Accused engaged in menial jobs and vegetable farming to support his father financially. The offence occurred under unfortunate circumstances where the aggressor turned into a victim. The Probation Officer stated that the Accused expressed a mixture of regret and justification based on the circumstances in which the Accused impulsively reacted to a threatened attack on his friend. The Officer concluded that the Accused's attitude is one who recognizes the gravity of his actions and is willing to embrace rehabilitation to atone for his misdeeds.
8. The pre-sentence report indicates that the victim's mother seeks justice for her son and expressed mixed feelings about a non-custodial sentence but is open to the idea of the Accused undergoing rehabilitation if it ensures he will not harm anyone else again. The community stressed the need for accountability and for the Accused to demonstrate genuine change before being reintegrated into the community.
9. Based on the social inquiry, the Probation Officer recommends that the Accused be granted a non-custodial sentence with mandatory rehabilitation including conflict resolution training, psychological counselling and vocational skills development.
10. I have considered the Accused's mitigation and the pre-sentence report. I have also considered the fact that the Accused sustained injuries classified as harm to the upper limbs, during the confrontation that led to the unfortunate turn of events where the deceased lost his life.
11. I have also considered the fact that having been born in the year 2004, the Accused was still a teenager at the time of the offence.
12. I have also looked at the record and note that on 15<sup>th</sup> July 2024, the 1<sup>st</sup> Accused's bond was cancelled at the request of his father Morris Munyendo Musungu and mother Juliet Olesi Munyendo who testified on oath that the Accused had refused to go back to school, become quarrelsome to everyone in the homestead and the neighbourhood and was demanding his share of land. According to the mother, the Accused had threatened to kill her and burn down the family house and adamantly refused to go for counselling.
13. It is not easy for a parent to surrender on a child and urge the court to place him in custody in the hope that he will reform. The Accused must have behaved in such a bothersome and threatening manner that the parents felt that they would be more at peace if he was incarcerated.
14. Having said, I have put all the submissions made by the parties into consideration. I have also taken the Probation Officer's report into consideration as well as the Accused's behaviour towards his parents during the pendency of this case.
15. Notwithstanding the recommendation by the Probation Officer, I find that this is a suitable case for a custodial sentence. Hopefully, the time spent in prison will enable the Accused to reflect more deeply on the consequences of an ungoverned temper. The Accused must suffer the consequences of his irrational behaviour that had a fatal outcome.
16. Additionally, the family of the victim need to have a sense of retribution and that can only be achieved through a custodial sentence in the prevailing circumstances.



17. Considering the age of the Accused and the possibility that as he grows more mature, he is more likely to reform and be amenable to rehabilitation, I sentence the 1<sup>st</sup> Accused to five (5) years imprisonment. The 1<sup>st</sup> Accused shall not benefit from the provisions of Section 333 (2) of the *Criminal Procedure Code* due to the circumstances of his case.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 17<sup>TH</sup> DAY OF FEBRUARY 2025.**

**A. C. BETT**

**JUDGE**

In the presence of:

Ms. Chala for the Prosecution

Mr. Wandallah for the Accused

Court Assistant: Polycap

