



REPUBLIC OF KENYA



**Republic v Kulukulu (Criminal Case E021 of 2023)
[2025] KEHC 1958 (KLR) (13 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 1958 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL CASE E021 OF 2023
AC MRIMA, J
FEBRUARY 13, 2025**

BETWEEN

REPUBLIC STATE

AND

AINEA EKIRU KULUKULU ACCUSED

SENTENCE

1. The accused herein, Ainea Ekiru Kulukulu, was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence were that on the 20th day of October 2023 at Makunga A Kapkoi sub-location, Kwanza Sub county within Trans-Nzoia County, unlawfully murdered Selina Akhamaisi Amadol by physically hitting her on the head.
2. The Accused pleaded not guilty. However, on 28th November 2023, before the trial began, the parties informed this Court that they were engaged in plea-bargaining. On 27th February 2024, the parties had agreed and they presented the agreement before the Court. The agreement was eventually admitted as part of the record and the accused pleaded guilty to the offence of Manslaughter.
3. Mitigations were tendered on 11th June 2024. Learned Counsel for the accused Mr. Majanga, submitted that the accused has been in custody for 7 months, has reflected on his life and is remorseful and ready to reform. It was his case that he is a first offender and that the probation report was in his favour. Learned Counsel also submitted that the Accused is the breadwinner and has a young family of two children whose mother died and are under the care of the Children Department in Kitale. He prayed that the accused person be released.
4. Miss. Kiptoo, the Learned Prosecution Counsel was in support of the probation report. It was her submission that there is need for the accused to be reconciled with his children. She urged that the Children Department needs to work with the Probation on the way forward since the accused is the only parent.



5. I have intently interrogated the Pre-sentence Report. The Accused is a first offender. He conceded that he committed the offence because of immense anger when a confrontation ensued between him and his wife. He attributed his anger to the fact that his wife came home drunk despite not being in good health. She had tuberculosis and was on antiretroviral drugs.
6. The Report indicates that the accused regretted his actions and pleaded for mercy since he did not intend to take away the life of his wife. It observed that the accused was a first offender and did not belong to any group nor was he involved in any crime related activities. In view of his age and health condition, he was known to be peaceful among his neighbours. He was spoken of positively by the neighbours.
7. It further was reported that the accused engaged in farming in his one-acre piece of farm and the victim got into alcoholism and deserted her homestead.
8. The victims impact section of the Report indicated that the family members of the deceased were still bitter as they contend that the deceased died a painful death. They were, nevertheless, willing to undertake reconciliation. It was, however, emphasized that justice ought to prevail for the sake of the children who witnessed the ordeal, a fact that traumatized them. It also emerged that the children had to undergo counselling at the Children's home, but they were not very stable since their parents were alcoholics and would fight. The Probation officer stated that he interviewed one of the children, Cleopha Ainea, who stated that he was happy at the Children's home since they have access to basic necessities.
9. The officer observed that the children would benefit from continuous counselling and close supervision in order to win them back to their father.
10. The community and the Area Chief had no issues with the accused. The latter stated that despite taking alcohol, the accused was peaceful. It was his position that the accused is not a threat to the community and can be rehabilitated within the same environment.
11. The Probation Officer recommended a lenient sentence which will go a long way in fostering a relation with the accused's children. He stated that he might not remove them from the Children's' home, but the accused will be visiting them to enable bonding and get over trauma.
12. With the foregoing, the Court now turns to the cause of death. The Post-Mortem report, indicates that the deceased's died of head injury secondary to assault by blunt object. She was also suffering from chronic lung and liver disease. Externally, the deceased had fresh bruises on the face, abdomen, upper limbs, back and lower limbs. She also had swollen ankles and had distinctive bruises on the forearms.
13. The post-mortem report is testament to the level of violence the accused inflicted on the deceased. The injuries she suffered were not only fatal but were inflicted repeatedly. Additionally, the part of the body upon which the injuries were inflicted on spoke to the mind frame of the accused. The injuries were on the head, abdomen, forearm, the face, upper limbs, back and lower limbs. It is evident that the deceased sustained injuries in his hands as she tried to defend herself. Nonetheless, the accused continued relentlessly to harm her.
14. The foregoing conduct cannot be excused at the altar of the positive report of the Probation Officer. He must be criminally held responsible and penal consequences must ensue in order to protect the society from such atrocious people.



15. In *R v Scott* (2005) NSWCCA 152, Howie J. Grove & Barr JJ remarked on the objective of sentencing as follows: -

.... There is a fundamental and immutable principle of sentencing that this sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed in the circumstances of the crime committed. one of the purposes of punishment is to ensure that an offender is adequately punished, a further purpose is to denounce the conduct of the offender.

16. Under Section 205 of the *Penal Code*, the offence of manslaughter attracts punishment of up to life imprisonment. However, since the accused pleaded guilty to the lesser charge of manslaughter and taking into consideration the circumstances under which this offence was committed, the age of the accused, his health status as well as the mitigations presented and not forgetting the objects and guidelines on sentencing, the accused cannot walk scot-free. He must be held to account for his heinous actions

17. Having gone through the Pre-Sentence Report comprehensively, it is this Court's assessment that the accused needs to be rehabilitated through counselling on self-control and anger management. Since the deceased's kins are still bitter with the death of their loved one and the children are under the care of the Children Department, the accused can sufficiently serve a custodial sentence and thereafter the alternative dispute resolution mechanism may take its course since that process has not even been initiated so far.

18. In the premises the following final orders hereby issue: -

- a. The Accused is hereby sentenced to seven (7) years imprisonment.
 - b. The sentence to be computed from the date the Accused was charged, that is on 16/11/2023.
- Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF FEBRUARY, 2025.

A. C. MRIMA

JUDGE

Sentence delivered virtually in the presence of:-

N/A for Mr. Majanga, Learned Counsel for the Accused.

Mr. Mugun, Learned Prosecutor instructed by the Director of Public Prosecutions for the Respondent/State.

Chemosop/Duke – Court Assistants.

