



**Republic v Iyulu alias Bonny (Criminal Case E030 of 2023)
[2025] KEHC 1849 (KLR) (7 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 1849 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E030 OF 2023
A MSHILA, J
FEBRUARY 7, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

BONIFACE KAVINDO IYULU ALIAS BONNY ACCUSED

SENTENCE

1. The accused was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code; upon a Plea Bargain Agreement being entered this charge was then reduced to manslaughter;
2. The Plea Bargain Agreement was adopted by the court upon being satisfied that the accused had understood the contents and that he had executed it voluntarily without promise of benefit of any kind and without threats, force, intimidation or coercion;
3. The accused was charged with having unlawfully killed David Jinaro Muthoni on the 15th July, 2023 at Jomoko Area within Thika West Sub- County, within Kiambu County;
4. The facts as read out by the Prosecuting Counsel are as follows; The accused was employed as a watchman to guard kiosks in Jomoko Area; On 15th July, 2023 whilst on duty the accused spotted the deceased and thinking he was a thief grabbed him and tried to wrestle him to the ground; the deceased wrestled free overpowered the accused and hit him with a hammer; when overpowered the accused screamed and upon hearing the accused's screams the other watchmen came to his rescue and beat up the deceased; at 5.00 am the owner of the kiosk found the deceased lying outside and called his brother who took him to Thika Level 5 Hospital; the doctors tried to revive him but he passed away; The accused was arrested and taken to Thika Police Station.
5. The post-mortem was conducted on 31/07/2023 by Dr. Mathaya and the Report revealed that the cause of death was injuries to the head due to multiple blunt force trauma consistent with assault;



- Prosecuting Counsel produced into court the Post Mortem Report as an exhibit which was marked as 'PEXh.1';
6. The accused stated that the facts as narrated were correct and the Court proceeded to convict him on his own plea of 'Guilty' for the offence of Manslaughter c/s to Section 202 as read with Section 205 of the [Penal Code](#);
 7. The accused was represented by Learned Counsel Mr. Mulwa whereas Mr. Gacharia was the Prosecuting Counsel for the State; Both Counsel were invited to make submissions before sentencing;
 8. In mitigation Counsel for the accused submitted that the accused was employed as a security guard in Jomoko Area and his duties involved securing his employers valuable business property; on the fateful night the deceased was prowling on the premises armed with a hammer which was used to attack the accused and who then called out to his fellow watchmen for help and by the grace of God they came to his rescue and any subsequent beatings inflicted on the deceased was from those who came to his rescue; the injuries occasioned to the deceased and the circumstances leading to his death were not pre-meditated and on the part of the accused it was an act of self defence; the accused in trying to do the right thing by protecting his employers property acted within the limits of employment.
 9. The accused had readily pleaded guilty at the earliest onset and thus saved on judicial time; his client was extremely remorseful and prayed for justice to be tempered with mercy; the prosecution had no previous records and that he be treated as a first offender; counsel prayed for a lenient sentence preferably a non-custodial sentence on the grounds that the accused was a family man with a wife and two children who were dependent on him; For those reasons Counsel pleaded for leniency and urged the court to impose a non-custodial sentence to enable the accused to take care and provide for his children;
 10. Prosecuting counsel submitted that the life once snuffed out was irrecoverable and it was imperative that the family of the deceased receive justice; the prosecution had no previous records of the convict; a Victim Impact Assessment Report be called for to assist in sentencing.

Analysis

11. The applicable law on sentencing for the offence of manslaughter is found under the provisions of Section 205 of the [Penal Code](#) which reads as follows;

“ Any person who commits the felony of manslaughter is liable to imprisonment for life”
12. The Court of Appeal however has declared the life sentence to be unconstitutional and has held that an accused person may receive a sentence that could potentially allow him a chance of parole and release at some point in time; The above notwithstanding, it is the duty of this Court to impose a sentence that meets the facts and circumstances of the case;
13. The aggravating factors are the accused's failure to rush the deceased to hospital; together with his fellow watchmen they also failed to report the incident to the police or other authority and had instead left the deceased to lie at the scene as if nothing untoward had ever happened until the employer arrived in the morning and dealt with the situation by calling for assistance to rush him to hospital.
14. The mitigating factors are that the circumstances leading to the unfortunate incident demonstrate that the accused had no premeditated intention; by accepting the Plea Bargain Agreement the accused had not wasted judicial time;



15. Other factors taken into consideration is the Victim Impact Assessment Report; Having perused the Report it is noted that despite the accused had taken no reconciliatory steps with the victims' family, it is noted that the family had come to terms with their brothers' demise and had forgiven the accused and moved on with their lives;
16. The accused is a young man aged 37 years and a family man and is the sole breadwinner; lastly, he is found to have no previous record and is deemed to be a first offender;
17. In the light of the mitigating factors of assault by the deceased and the accused acting in self defence whilst trying to prevent the commission of a crime this Court is satisfied and that the accused is deserving of a lenient sentence but also a sentence that will act as a deterrent to others who engage in mob justice by taking the law into their hands; and finds a custodial sentence of Two (2) years to be an appropriate sentence.
18. He is found to be deserving of the benefits of the proviso to Section 333(2) of the [Criminal Procedure Code](#) which section requires this court to take into account the time the offender spent in custody during the trial. The period he was remanded can be deducted from the sentence.

Findings & Determinations

19. Having taken all factors into consideration this Court makes the following findings and determinations;
 - i. The accused is convicted on his own plea of guilty for the offence of Manslaughter;
 - ii. The accused is hereby sentenced to two (2) years custodial sentence.
 - iii. The period spent in custody from the date of arrest 15/07/2023 to the date of sentencing be deducted from his term and is found to also be entitled to remission having already spent two-thirds of his sentence in custody.

Orders Accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 7TH DAY OF FEBRUARY, 2025.

A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

Gacharia – Prosecuting Counsel for the State

..... – for the Accused

Accused - present

