



**Republic v Wambua alias Sanga & another (Criminal Case
E007 of 2023) [2025] KEHC 2354 (KLR) (7 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 2354 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E007 OF 2023
A MSHILA, J
FEBRUARY 7, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

STEPHEN MUTINDA WAMBUA ALIAS SANGA 1ST ACCUSED

ALFONCE KIOKO MUTUNE ALIAS KATINGAYA 2ND ACCUSED

SENTENCE

1. The 2nd and 3rd accused were initially jointly 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 the charge was then reduced to manslaughter;
2. The Plea Bargain Agreement was adopted by the court upon it being satisfied that the accused had understood the contents and that they had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion of any kind;
3. The accused were charged jointly with having unlawfully killed John Muinde Muema on the 9th February, 2023 at Munyu Area in Gatwanyaga Ward in Thika East Sub- County, within Kiambu County;
4. The facts of the case as narrated by the prosecution are that the Deceased and the accused persons were employed to work in the quarries in Kamunyu near the banks of Athi River in Thika County; On 9/02/2023 the 2nd accused arrived at the changaa den and bought himself a bottle worth Kshs.50/- ; and was later joined by the 1st accused and 3rd Accused and others; the deceased was also present at this drinking den and is said to have confronted the 3rd accused person and accused him of stealing from him in that the 3rd accused had been paid Kshs.1000/- and the same was to have been shared between them equally which he failed to do; the 3rd accused cautioned the deceased from making such utterances



- but the deceased did not stop; the deceased who was armed with a panga attacked the 3rd accused with the flat side of the panga and in the course of the melee the 3rd accused lost a tooth; The 3rd accused managed to overpower and disarm the deceased and used the same panga to cut the deceased; the panga was snatched from the 3rd accused by witnesses who intervened and took the deceased to Thika Level 5 where he died while undergoing treatment;
5. The post-mortem was conducted by Dr. Mathai and the report revealed that the cause of death was due to grand force trauma caused by injuries to the head; Prosecuting Counsel produced the Post Mortem Report which was marked as 'PEXh.1';
 6. Both accused stated that the facts as narrated were correct and the court proceeded to convict them on their own pleas of 'Guilty' for the offence of Manslaughter c/s to Section 202 as read with Section 205 of the Penal Code;
 7. The accused were represented by Learned Counsel Miss Kimathi whereas Mr. Gacharia was the Prosecuting Counsel for the State; The two counsel were invited to make submissions before sentencing;
 8. In mitigation counsel for the accused submitted that the death was principally caused by provocation by the deceased who had accused the two of stealing from him; he was urged to stop making false accusations but the deceased persisted and did not stop; the circumstances leading to the death of the deceased were not pre-meditated; Counsel beseeched the court to look at the circumstances of that night had the deceased not provoked the accused persons; Counsel made reference to the case of Stephen Kepkeron vs Republic (2023) eKLR on the issue of provocation; The act was done at the heat of the moment; the accused had tried to cool down the deceased and they reiterated that the accused persons had no pre-meditation; they were truly remorseful over the demise of their workmate, Mwema;
 9. The accused had readily pleaded guilty at the earliest onset and thus saved on judicial time; the 2nd accused was aged 29 years was extremely remorseful for the death of his fellow workmate and prayed for justice to be tempered with mercy; As for the 3rd accused he was aged 32 years and was also extremely remorseful for the demise of the deceased;
 10. The prosecution had no previous records and that the accused be treated as first offenders; counsel prayed for a lenient sentence preferably a non-custodial sentence on the grounds that the deceased's family had come to terms with his passing on and they harboured no grudge against the accused persons and had since forgiven them; the deceased and the accused were all Kambas and the elder from the Atangwa Clan and the families of the deceased and accused persons had met and had made the requisite compensation and performed Kamba traditional rites to enable the accused to be accepted back to the community;
 11. For those reasons Counsel pleaded for leniency and urged the court to impose a non-custodial sentence to enable the accused reintegrate back into society.
 12. Prosecuting counsel submitted that the life that 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 was called for to assist in sentencing



Analysis

13. 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’

14. It is the duty of this Court to impose a sentence that meets the facts and circumstances of the case; The aggravating factors are the accused’s failure to rush the deceased to hospital but instead fled from the scene; they also failed to report the incident to the nearest police station again it is reiterated that they fled from the scene and went into hiding until they were arrested;
15. Defence Counsel submitted that the accused persons had never fled and had never reported the incident to the authorities due to fear of being arrested;
16. The accused ought to have also exercised restraint during the altercation which then led to a life being lost;
17. The mitigating factors are the accused had re-acted in self defence as they were in imminent danger due to the fact that the deceased had armed himself with a dangerous weapon namely a panga; Also, the circumstances leading to the unfortunate incident demonstrate that the accused persons were provoked and had no premeditated intention; and by accepting the Plea Bargain Agreement the accused had not wasted judicial time;
18. Other factors taken into consideration is the Families Agreement referred to the Victim Impact Assessment Report dated 4/12/2024; Having perused the Report it is noted that the accused had taken reconciliatory steps with the victims’ family; it is noted that the family had come to terms with their sons demise and had forgiven them and had accepted the compensation and performed the traditional rites for their admission back to the community;
19. The accused are both young men aged 29 years and 32 years respectively and are found to have no previous record and are deemed to be first offenders;
20. Though the mitigating factors outweigh the aggravating factors by far non-the-less this Court finds that the accused are deserving of a deterrent custodial sentence for failing to exercise restraint during the melee and using a lethal weapon; therefore, a sentence of five (5) years imprisonment is found to be appropriate for each accused;

Findings & Determinations

21. Having taken all factors into consideration this Court makes the following findings and determinations;
- i. The accused are convicted on their own plea of guilty for the offence of Manslaughter;
 - ii. The accused are hereby sentenced each to a term of five (5) years custodial sentence.
 - iii. The period spent in custody from the date of arrest 20/02/2023 to the date of sentencing 7/02/2025 be deducted from their term of sentence.

Orders Accordingly.

DATED, SIGNED AND DELIVERVVVED VIA TEAMS AT KIAMBU THIS 7th DAY OF FEBRUARY, 2025.



A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

Nyamesa – Prosecuting Counsel for the State

Miss Kimathi – for the 2nd and 3rd Accused

2nd and 3rd Accused - both present

