



**Republic v Lubondi (Criminal Case E053 of 2023)
[2025] KEHC 2218 (KLR) (Crim) (5 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 2218 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE E053 OF 2023**

**LN MUTENDE, J
FEBRUARY 5, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

GODFREY OPIYO LUBONDI ACCUSED

SENTENCE

1. Godfrey Opiyo Lubondi, the Accused, was initially charged with the offence of murder contrary to section 203 as read with Section 204 of the *Penal Code*, but, opted to enter into a plea-bargaining arrangement with the State/prosecution as per the plea bargain agreement subsequently signed on 11th November, 2024 that was adopted as an order of this court pursuant to section 137 H of the *Criminal Procedure Code*. Consequently, he was convicted of a lesser charge of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*.
2. Facts of the case are that on 18th July, 2023 at 17:00 Hours the deceased, Phillip Mwambua Mwachila alias Mwachiuri, a casual labourer within Mwiki was heading to an apartment owned by Charles Isika Mislava, who had not paid him for painting work that he had done for him, when he encountered the accused, a tenant at the building. The deceased asked him to give him way to pass which led to an altercation between them and a fight ensued.
3. The accused who seemed drunk physically assaulted the deceased and overpowered him. Members of public intervened and the accused stopped assaulting the deceased who had sustained stomach injuries. He was advised to report the incident to the police., which was done as per OB42/18/7/2023. He was referred to hospital but instead of seeking treatment he went home. However, his condition worsened and he disclosed to his mother what happened.



4. The deceased's mother went to accused's house at 21:00hours seeking to know what happened, but the accused who appeared drunk was offensively impolite. He stated that had he not known the deceased's brother, he would have killed him for hurling an insult at him. The deceased's mother went back home and found him writhing in pain. He was rushed to hospital and subsequently admitted at the Intensive Care Unit, Kenyatta National Hospital. His condition worsened and he was pronounced dead at midnight. A report was made at Kasarani Police Station per the OB No. 36/20/7/23
5. Upon learning of the deceased demise, on 21st July,2023, members of public arrested the accused twin brother, Stephen Odongo Lubondi and escorted him to the police station, Mwiki. On the 22nd July,2023, the accused's elder brother, Erick Ogallo Lubondi notified him that he was required at Mwiki Police Station following injuries he inflicted on the deceased. He went to the Police Station and was arrested. An order was obtained from court in Miscellaneous Application Number E796 of 2023 that enabled the police to detain him until he was arraigned before this court on 17th August,2023. He was subjected to psychiatric examination and found to be fit to stand trial.
6. A post-mortem examination was conducted at KNH Mortuary on 25th July,2023 which established that the cause of death was due to rheumatic penetration, blunt abdominal trauma and extepride lapocerony.
7. To reach a suitable sentence this court called for a pre-sentence report. The report dated 11th May,2024 captured views of the secondary victims. The deceased was not married, and had no child. He was a co-parent of his siblings after his father died. He lived in the family house with his mother and his siblings. That being a provider of the family from his painting work, his death has made his mother develop high blood pressure and diabetic complications. Praying that the accused be sentenced to death they expressed dissatisfaction with the plea bargain process.
8. The community views were obtained from Mwiki and the accused rural home in Busia. The Mwiki Kasarani community who knew both families hoped that the accused stay in remand had taught him some lesson as to different ways of resolving issues. The Busia community vouched for the accused good character and social standing in the community. The investigation officer had no negative report for the offender.
9. The accused was stated to not have any developmental challenges save for motor vehicle road accident which affected some of his organs. His wife however deserted their matrimonial home after his arrest. That the sentence do take into consideration of sentiments of the victim family as well as those of the offender family.
10. It is recommended by probation services that the court considers a mixed sentence, custodial then on release to be under probation supervision for three (3) years.
11. In pre-sentence mitigation, through learned counsel, Mr. Mururu of the firm of Okoth & Company Advocates, the accused expressed remorse calling upon the court to consider the fact that he is a first offender, and the period spent in custody. That he is undergoing medical treatment and is currently living with a catheter requiring frequent medical check-ups. For reasons afore stated the accused seeks to be granted a non-custodial sentence so as to be re-integrated into his family for purposes of medical care and attention.
12. Learned prosecution counsel, Ms. Ogwenyo submits that considering what is captured in the pre-sentence that state that victims are still grieving, it calls for a non-custodial sentence and not a mixed sentence as proposed by probation. She called upon the court to be guided by the facts as captured in



- the plea agreement and the record which clearly indicate steps taken to reach the agreement which was signed after the mother, brother and friend of the family took part of the process.
13. The provisions of Section 205 of the *Penal Code* enact that:

“ Any person who commits the felony of manslaughter is liable to life imprisonment.”
 14. I have been called upon to consider sentencing the accused to a non-custodial sentence. Whether or not to consider a custodial or non-custodial sentence depends on circumstances of the case. The court must consider existence of aggravating circumstances if any, and the mitigating factors. (Also see Sentencing Policy Guidelines) The sentence must be appropriate, just and effective.
 15. The offence of manslaughter is serious such that a non-custodial sentence would not be appropriate, unless there exist unique circumstances that led to commission of the offence.
 16. The accused who has expressed remorse, he is stated to be 35 years old, and a first offender. The deceased asked to be given way to pass but he was not accorded the opportunity. It is alleged that the deceased hurled an insult, not divulged, to the accused, who acted by physically attacking him. What actually provoked him remains undisclosed which cannot act as a mitigating factor. The impact on the victims is clear, their desire is to have the accused incarcerated so as to pay for the harm done. This means they are calling upon this court to impose a retributive and deterrent sentence. Morally, they would like to see the sentence imposed to restore justice to both the victim and accused.
 17. It is stated that the accused seemed drunk at the time. However, his impertinent to the mother of the deceased suggesting an intention to kill him save for being a person known to his brother, the following day, showed lack of remorse. Although it is submitted that the accused is remorseful, there is absolutely nothing to suggest that the accused willingness to engage in rehabilitation programs so as to positively change his behaviour.
 18. The principle of proportionality must be taken into consideration and the severity of sentence should be comparable with the seriousness of the offence. In *Omuse v R* [2009] KLR 214, the court held that sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and the proper exercise of discretion in sentencing requires the Court to consider that fact and circumstances of the case in their entirety before settling for any given sentence.
 19. In *Ambani v Republic* [1990] eklr, Bosire J. held that:

“Sentences imposed on accused persons must be commensurate to the moral blameworthiness of the offender ...It is an improper exercise of discretion not to look on the facts and circumstances of the case in their entirety before settling for any given sentence,...”
 20. A comparison with other sentences meted out show that courts have meted out sentences outside the maximum sentence of life imprisonment for manslaughter.
 21. In the case of *R-Vs- Jared Onyoni Maina* [202] eklr, Ougo J. sentenced the accused to ten (10) years imprisonment. In that case the accused pleaded guilty to manslaughter, he stated during mitigation that he was drunk and that he would stop taking alcohol. He was 39 years old and had 4 children.
 22. The accused herein saved judicial time by plea bargaining. He has been in custody for one year, five months, a period that I do take into consideration. For reasons given, I hereby sentence the accused to fifteen (15) years imprisonment with effect from the date of arrest, 22nd July, 2023.
 23. It is so ordered.



DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF FEBRUARY, 2025.

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L.N. MUTENDE

JUDGE

