



Republic v Isako (Criminal Case 6 of 2020) [2025] KEHC 2773 (KLR) (13 March 2025) (Sentence)

Neutral citation: [2025] KEHC 2773 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT
CRIMINAL CASE 6 OF 2020
JN NJAGI, J
MARCH 13, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

GODANA ADANO ISAKO ACCUSED

SENTENCE

1. This court on the 21st January 2025 found the accused guilty of the offence of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. The matter is coming up now for the court to determine the most appropriate sentence on the convict.
2. The sentence for the offence of manslaughter under section 205 of the Penal code is life imprisonment.
3. Counsel for the convict, Mr. Halake, mitigated on behalf of the convict that the accused is aged 65 years. That he is a father and a grandfather and is remorseful for the offence committed. Counsel pleaded for a non-custodial sentence.
4. The court called for a pre-sentence report that was prepared by the probation officer, Marsabit County. The report indicates that the convict is aged over 65 years. That he was a herder before his arrest. That he had no criminal history. That he is remorseful and never intended to kill the deceased. That the killing was accidental.
5. The report indicates that the convict is married with 2 wives. That his family has taken steps to initiate reconciliation with the family of the deceased though the two families are in laws and their custom does not allow them to pay anything in form of compensation to the deceased's family.
6. The report further indicates that the convict complains of suffering from hernia, memory lapse and has partial vision impairment. That the area chief described him as a hardworking old man who has been of good conduct before his arrest.
7. The report recommends a non-custodial sentence.



8. The brief facts of the case are that on the night when the offence was committed, the accused and his herder colleagues were sleeping in the bush in the grazing field where they were herding their animals. The convict was armed with a firearm. That he woke up and found one of his colleagues, the deceased, coming back to the sleeping place from a short call. He mistook him for an intruder and fired at him. The deceased died on the spot. The incident was reported to the police. The convict was arrested and charged with the offence of murder. He was tried by this court and was found guilty of the offence of manslaughter.
9. It is now my duty to pass an appropriate sentence on the convict. I have in the first place to observe that sentencing lies at the discretion of the trial court and that being so, it has to be exercised judiciously. The court is required to look into all the circumstances of the case before arriving at any particular sentence. In this regard, the Court of Appeal in Charo Ngumbao Gugudu v Republic [2011] eKLR held as follows: -

“Further, the law is that sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that it is thus not proper exercise of discretion in sentencing, for the Court to fail to look at the facts and circumstances of the case in their entirety before settling for any given sentence – see Ambani R [1990] KLR 161”.
10. The Judiciary Sentencing Policy Guidelines lists the objectives of sentencing at page 15 paragraph 4.1 as follows:

Retribution: To punish the offender for his/her criminal conduct in a just manner.

Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.

Restorative Justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims, communities’ and offenders’ needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.

Community protection: To protect the community by incapacitating the offender.

Denunciation: To communicate the community’s condemnation of the criminal conduct.
11. The convict is an elderly person. Under the sentencing guidelines on elderly and sick offenders, it is provided under paragraphs 20:25 and 20:26 as follows:

20.25 There is no special consideration for terminally ill and elderly offenders. However, as with the case of offenders with disability, the consideration is whether in view of the illness or age, the sentence is rendered excessive. There are two dimensions worth considering. First whether the illness or old age would cause the offender to experience undue and unjustifiable hardship in custody. Further, whether the conditions in custody would be termed inhuman bearing in mind the offenders’ state. Second, whether the offender’s condition is one that would cause undue burden on other offenders and/or prison officers taking care of him/her.

20.26 Article 57 of *the Constitution* affirms the right of older members of society to live in dignity. The sentence imposed on them must therefore not undermine this right.



12. The Court of Appeal in *Thomas Mwambu Wenyi v Republic* [2017] eKLR discussed the principles of sentencing and cited the Supreme Court of India in *Alister Anthony Pereira v State of Mahereshra* at paragraph 70-71 where the court held the following on sentencing:

Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principles of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.

13. I have considered the principles of sentencing as stated above. I have further considered the mitigation by the convict herein and the recommendation as contained in the pre-sentencing report.
14. The convict is aged 65 years and is a first offender. He is a family man and a grandfather. He is remorseful for the offence committed.
15. I have considered the circumstances under which the offence was committed which indicate that the convict mistook the deceased for an intruder and fired at him without making inquiries as to who he was. The family of the convict and that of the deceased are related and plead for a lenient sentence on the convict. In view of the foregoing, I consider a non-custodial sentence to be the most appropriate in the peculiar circumstances of this case. I sentence the convict to serve a probation sentence of three years. The same to be served under the supervision of the Marsabit County Probation Officer.
16. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED AT MALINDI THIS 13TH DAY OF MARCH 2025

J.N. NJAGI

JUDGE

In the presence of:

Mr. Otieno for Republic

Mr. Halake for accused

Accused – present

Court Assistant – Jarso

14 days R/A.

