



**Republic v Ntheleku (Criminal Case 40 of 2017)
[2025] KEHC 9367 (KLR) (13 March 2025) (Sentence)**

Neutral citation: [2025] KEHC 9367 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE 40 OF 2017
TM MATHEKA, J
MARCH 13, 2025**

BETWEEN

THE REPUBLIC ACCUSED

AND

PAUL MUTHIAN NTHELEKU RESPONDENT

SENTENCE

Sentence

1. The accused person Paul Muthiani Ntheleku Alias Saka was charged with murder contrary to section 203 as read with section 204 of the [Penal Code](#) of the murder of Boniface Kimondiu Ikomba on the night of 10th/11th December 2016.
2. After a full trial, he was found guilty and convicted for the offence of manslaughter contrary to section 202 as read with section 205 of [Penal Code](#).
3. Upon the conviction, defence counsel sought for a pre-sentence report.
4. The report indicates that the convict was born in 1989 and upon completion of primary school, joined secondary school but dropped out in form 2 due to mental health issues. It was alleged that he had been referred to Mathari hospital from 2011 and that this year alone; he had been in outpatient hospital three times.
5. The record shows that on 20/4/2017 – the convict was referred to Mathari hospital for mental assessment before he took plea. The specialist psychiatrist wrote back to court to the effect that it is the accused then who told the doctor that he was treated in Mathari in 2011 for mental illness. The doctor requested that the father of the accused to accompany him at the next appointment.



6. On 6/2/2018 the report dated 1/2/18 was filed from Mathari hospital. He was examined. His father did not accompany him. He was found to be fit to plead. He reported to use alcohol, cannabis, khat and cigarettes. The mental status evaluation was recorded thus:

Mental status evaluation:

Appearance: Well groomed Eye contact: Maintained throughout the interview Rapport: Established with ease Mannerism: None Speech: Normal rate, pitch and tone Mood: Euthymic Affect: Appropriate Perceptual disturbances: None Thought disturbances: None Opinion: Fit to take plea.

7. The Probation After Care Services report of 8/8/2018 indicated that the accused had a mental health illness and that he was incoherent at that time of the interview. The record however does not have evidence of the convict attending any mental health clinic for treatment or followup..
8. I have noted that throughout the trial – the convict was in good mental health. He began attending the clinic in 2019 soon after he was released from remand on bond – and later in 2024.
9. What is the place of convict’s mental health in the sentencing? The Updated [sentencing guidelines](#) provide the following guidelines: Sentencing offenders with a mental disorder 3.4.22:

For all other cases that do not fall within Sections 166 or 167, where it appears that the offender is or appears to be suffering from a mental disorder at the time of sentencing, the court must obtain a medical report before passing a sentence unless the court considers it unnecessary to do so e.g., if existing, reliable and up to date information is available. Where conditions are progressive, the impact of the sentence may also require expert opinion particularly where custody is being considered. 3.4.23 In determining the sentence, courts will naturally assess culpability – see the section on GATS in Part V. Culpability may be reduced if at the time of the offence the offender was suffering from a mental disorder and provided that there is a sufficient connection between the offender’s disorder, and the actual offending behaviour. Whilst expert testimony can be very helpful on this issue, the court is not bound to follow that opinion if there are compelling reasons to set it aside in which case the court must state those reasons. If the court considers that culpability should be reduced, it must provide the reasons and the extent of that reduction. Relevant factors in this context may include but are not limited to: Whether at the time of the offence, the offender’s disorder causes them to behave in a disinhibited way. Where an offender was failing to take medication prescribed for the disorder at the time of the offence, the court must consider the extent to which that failure was wilful or arose as a result of the offender’s own lack of insight into their mental disorder. Was the offender ‘self-medicating’ with alcohol or non-prescribed or illegal drugs at the time and did that make it worse? If so, the court should consider the extent to which the offender was aware that would be the effect.

3. 4.24 If the court considers a custodial sentence is merited, the court must consider the impact of the mental disorder when assessing the length of sentence. This is because the sentence may exacerbate the effects of the disorder. When a custodial sentence is passed, the report and any other relevant information concerning the offenders physical and mental health should be forwarded to the prison to ensure they have the appropriate information and can ensure the welfare of the offender. 3.4.25 Courts must take particular care to ensure that the offender understands the sentence and what will happen if they reoffend or breach the terms of community service, probation, or suspended sentence order.



10. For this offender the record shows that at the at the time of plea, and through out the trial accused was fit to stand trial and throughout the trial no issue of mental health issue was raised. Even the 2011 incident was not documented and there is no history of any issue up to 2019 when the offender was released on bond. The fact then is that at the time of committing the offence the accused was of good mental health as at the time he took plea, up to the time he was released on bond – there was no issue of mental health raised.
11. Section 202 of the [Penal Code](#) states provides for the offence of manslaughter, and s. 205 for the penalty:
202.
 - (1) Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter.
 - (2) An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.205. Any person who commits the felony of manslaughter is liable to imprisonment for life.
12. In the circumstances, what is the appropriate sentence for the convict?
13. The Probation After Care Services report proposes a non-custodial sentence on probation.
14. I have considered the circumstances of this offence and the sentencing policy guidelines. A non-custodial sentence would not be appropriate in the circumstances. I am not persuaded that for a person who according to the Probation Officer, refuses to communicate with the Probation After Care Services Officer would benefit from non-custodial sentence. Probation supervision is dependent on communication, on consent and consensus. The risk of noncompliance is higher in such a case where the consensus of the offender has not been obtained. would serve the purpose of sentencing?
15. The sentencing policy guidelines provide that sentencing recognize that sentencing is one of the most intricate aspects of the administration of trial justice.it is a balancing act all in the interests of justice.
16. In considering a custodial sentence the court is to do the following as per the [Sentencing Guidelines](#)
Custodial versus non-custodial sentences
 - 2.3.13 Where the option of a non-custodial sentence is available, a custodial sentence should be reserved for cases where the offence is so serious that neither a fine nor a community sentence can be justified. The length of that sentence will depend on the maximum penalty allowed by law and the seriousness of the offence and other factors set out in Part V. The court should bear in mind the high rates of recidivism associated with imprisonment and seek to impose a sentence that is geared towards achieving the sentencing principles and objectives set out in Part I.
 - 2.3.14 Imprisonment of petty offenders should be avoided, as the rehabilitative objective of sentencing is rarely met when offenders serve short sentences in custody. Further, short terms of imprisonment are disruptive and contribute to re-offending.
 2. 3.15 In deciding whether to impose a custodial or a non-custodial sentence, the following factors should be considered:
 - i. Gravity of the offence: In the absence of aggravating circumstances, or any other circumstance that renders a non-custodial sentence unsuitable, a sentence of



imprisonment should be avoided with respect to sentences that have been adjudged as deserving less than three (3) years.

- ii. Criminal history of the offender: Taking into account the seriousness of the offence, first offenders should be considered for non-custodial sentences except where the seriousness of the offence crosses the custody threshold as set out in paragraph 2.3.13 above. When dealing with repeat offenders, consideration should be given to the nature of the previous behaviour and the time that has elapsed between the previous conviction and the current offence. For adult offenders with previous convictions that relate to offences committed when the offender was a child, these should be disregarded unless the circumstances of the case demand that they be taken into account owing to the similarity or frequency of the behaviour, or the seriousness of the previous offence(s). In any event, previous convictions should not be taken into consideration unless they are either admitted or proved.
- iii ...
- iv. Conduct of the offender: non-custodial sentences are best suited for offenders who are already remorseful and receptive to rehabilitative measures.
- v. Protection of the community: Where there is evidence that the offender is likely to pose a threat to the community, a custodial sentence may be more appropriate. The probation officer's report should inform the court of the risk posed by the offender to the community 48 in order to inform sentencing.
- iv. Offender's responsibility to third parties: Where committing an offender to a custodial sentence is likely to unduly prejudice others, particularly vulnerable persons who depend on them, a court should consider if, in light of the nature and seriousness of the offence, the objectives of sentencing can be met with a non-custodial sentence or a suspended sentence (see paragraph 2.11 of these Guidelines). The court should enquire into the offender's personal circumstances and, where appropriate, seek the assistance of a pre-sentence report.

12. I consider myself am properly guided by these guidelines and the authorities cited in the guidelines.
13. I find that the aggravating circumstances, and the sporadic mental health issues of the accused person require a custodial sentence paired with treatment.
14. I have taken into consideration the period the offender had spent in custody before being released on bond.
15. The offender is sentenced to serve seven years' imprisonment.
16. The in charge the Prison is directed to ensure that the offender is accorded the required treatment, and to be availed for all his follow up clinics where required.
17. The PACS Makueni is at liberty to follow up on the counselling and psycho social support for the offender and the victim family.
18. Within 30 days of imprisonment the offender be escorted to the Makueni Referral Hospital psychiatric unit for assessment and any treatment plan as the psychiatrist may deem appropriate.
19. These orders be served through the Deputy Registrar upon the in GK Prison and the Medical Superintendent Makueni County Referral Hospital and PACS Makueni



20. Right of appeal 14 days

**DATED, SIGNED AND DELIVERED IN OPEN COURT 13TH DAY OF MARCH 2025 MUMBUA
T MATHEKA**

JUDGE

SIGNED BY: LADY JUSTICE MATHEKA, TERESIA MUMBUA

THE JUDICIARY OF KENYA.

MAKUENI HIGH COURT

HIGH COURT DIV

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