



**Republic v Bisonga (Criminal Case E013 of 2023)  
[2025] KEHC 2367 (KLR) (6 March 2025) (Sentence)**

Neutral citation: [2025] KEHC 2367 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CRIMINAL CASE E013 OF 2023  
WA OKWANY, J  
MARCH 6, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**CHARLES NYABUTI BISONGA ..... ACCUSED**

**SENTENCE**

1. The Accused herein, Charles Nyabuti Bisonga, was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The Particulars of the charge were that on 18<sup>th</sup> and 19<sup>th</sup> June 2023, at Kianungu village, Bigege Sub-location, Bosamaro Chache location in Nyamira South Sub-County within Nyamira County murdered Beatrice Nyabuti.
2. Following a plea bargain agreement recorded on 26<sup>th</sup> June 2024, the Accused pleaded guilty to a lesser charge of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. The Accused was subsequently convicted on his own plea of guilty after which the Court directed the Probation Officer to file a Pre-Sentence Report before sentencing.
3. At the sentence hearing on 23<sup>rd</sup> January 2024, Ms. Gogi, Learned Counsel for the Accused, noted that the pre-sentence report recommended a lenient sentence. Counsel submitted that the Accused is a first offender and that he is remorseful for the offence. She urged the Court to grant the Accused a non-custodial sentence as he is willing and ready to serve the community in order to atone for his crime.
4. Mr. Mwangi, Learned Counsel for the state, on the other hand, submitted that the victims prayed for a custodial sentence because they lost a loved one.
5. I have perused the Pre-Sentence Report dated 10<sup>th</sup> December 2024 filed by the County Probation Officer, Mr. Nelson M. Maroa who recommends a lenient sentence. The report reveals that the Accused committed the offence in a fit of rage after he found his wife cheating on him with another



man in their matrimonial bed. The report further shows that the Accused has all along been a law abiding citizen, is a first offender, that he is a good family man.

6. It is trite that sentencing is an important aspect of the criminal justice system. In [Thomas Mwambu Wenyi v. Republic](#) (2017) eKLR, the Court of Appeal held thus: -

“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 circumstance 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 principle 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.”

7. I am also aware of the objectives of sentencing as outlined in the [Judiciary Sentencing Policy Guidelines](#) at paragraph 4.1 as follows: -

1. Retribution – to punish the offender for his/her criminal conduct in a just manner.
2. Deterrence – to deter the offender from committing a similar offence subsequently as well as to discourage the people from committing similar offences.
3. Rehabilitation – to enable the offender reform from his/her criminal disposition and become a law-abiding person.
4. Restorative justice – to address the needs arising from the criminal conduct such as loss and damages.
5. Community protection – to protect the community by incapacitating the offender.
6. Denunciation - to communicate the community’s condemnation of the criminal conduct.

8. It is expected that a court will consider the aggravating and mitigating circumstances of a case when sentencing a convicted person. The [Policy Guidelines](#) at page 49, paragraph 23.8, explain mitigating circumstances as follows: -

8. Mitigating circumstances warrant a more lenient penalty than would be ordinarily imposed in their absence. They include: -
  1. A great degree of provocation.
  2. Commitment to repairing the harm caused by the offender’s conduct evidenced by the actions such as compensation, reconciliation and restitution prior to conviction.
  3. Negligible harm or damage caused.
  4. Mental illness or impaired functioning of the mind.
  5. Age, where it affects the responsibility of the individual offender.



6. Playing of a minor role in the offence.
  7. Being a first offender.
  8. Remorsefulness.
  9. Commission of a crime in response to gender-based violence.
  10. Pleading guilty at the earliest opportunity and cooperation with the prosecution and the police.
9. Turning to the facts of this case, I note that the deceased died as a result of haemorrhagic shock secondary to a deep cut wound on the left thigh which medially disrupted the femoral vessel. The facts of the case reveal that that the Accused got agitated when his wife did not respond to his question regarding who she was speaking to on phone. The Accused locked up the deceased in the house and threw a panga at her when he discovered that she was trying to escape through the window.
  10. The facts of this case present aggravating circumstances on the conduct of the Accused person who turned violent on his own wife by locking her up in the house and arming himself with a panga which he did not hesitate to use on the deceased when she attempted to escape. This Court abhors and condemns, in the strongest terms possible, the acts of domestic violence that have resulted in fatalities such as the present case.
  11. In the instant case, it is unfortunate that a life was lost and there must therefore be accountability for the Accused's. This court cannot over-emphasize the importance of the sanctity of life as a God-given right which no one should take away at will. At the same time, the Court appreciates that the Accused is a first offender and that he committed the offence in a fit of rage.
  12. Section 205 of the *Penal Code* provides as follows: -
    205. Punishment of manslaughter
 

Any person who commits the felony of manslaughter is liable to imprisonment for life.
  13. The above provision posits that manslaughter attracts a maximum sentence of life imprisonment which does not mean that that such a sentence is mandatory. The Court may only impose the maximum sentence in appropriate cases where the circumstances call for a stiff sentence. I find guidance in the decision in *S v. Malgas* 2001 (2) S.A. 1222, SCA 1235 para. 25 where it was held thus: -
 

“What stands out quite clearly is that the courts are a good deal freer to depart from the prescribed sentences than has been supposed in some of the previously decided cases and that it is they who are to judge whether or not the circumstances of any particular case are such as to justify a departure. However, in doing so, they are to respect, and not merely pay lip service to, the legislature's view that the prescribed periods of imprisonment are to be taken to be ordinarily appropriate when crimes of the specified kind are committed.”
  14. I have considered the fact that the Accused is 65 years of age and a first offender. I have also considered the mitigating factors and the fact that the Accused pleaded guilty to a lesser charge of manslaughter thereby saving this court the precious judicial time that could have been spent in conducting a full trial. While I find that the maximum sentence prescribed by the law would be excessive and unnecessary in the circumstances of this case, I am also alive to the fact that a life was lost in a senseless fit of rage.
  15. I am of the view that the loss of life must count for something and that the society's indignation be reflected in the sentence. In this regard, it is my considered view that a non-custodial sentence would



also not be appropriate in the circumstances of this case. In the premises, I hereby sentence the Accused to serve five (5) years imprisonment with a rider that the period that he spent in remand custody, before he was released on bond, be considered when computing the sentence in line with the requirements of Section 333 (2) of the *Criminal Procedure Code*.

16. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYAMIRA VIA MICROSOFT TEAMS THIS 6<sup>TH</sup> DAY OF MARCH 2025.**

**W. A. OKWANY**

**JUDGE**

