



**Republic v Nyagah (Criminal Case E035 of 2024)
[2025] KEHC 4217 (KLR) (2 April 2025) (Sentence)**

Neutral citation: [2025] KEHC 4217 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL CASE E035 OF 2024
RM MWONGO, J
APRIL 2, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

LINCOLN NJERU NYAGAH ACCUSED

SENTENCE

The Charge

1. The accused was charged with murder contrary to Section 203 as read together with Section 204 of the *Penal Code*. The particulars of the offence are that on 03rd November 2024 at Isako village, Gasavari sub-location, Mutuabore location in Mbeere South sub-county within Embu County, the accused murdered Simon Njeru Thairi.
2. The accused pleaded not guilty and the plea was duly entered.

Plea-Bargaining Agreement

3. At the point of pretrial, the parties entered into a Plea-Bargaining Agreement dated 26th February 2025 signed by the accused, his advocate and the prosecuting counsel. The same was availed in court together with the Court Form for Recording the Plea Agreement and the deceased’s Post-Mortem report dated 06th November 2024.
4. The court was satisfied that the accused person is of sound mind and acted voluntarily and that he understood his rights highlighted under section 137F of the *Criminal Procedure Code* and signed as such in the Court Form. Consequently, the Plea Agreement has been adopted as part of the court record.



5. Accordingly, the accused person was convicted with the offence of Manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#). Under Section 205 of the [Penal Code](#), the punishment for Manslaughter renders the accused liable for imprisonment for life.

Mitigation

6. The accused person availed his mitigation in writing and the court has duly considered it.

The Probation Officer's Pre-Sentence Report (POR)

7. According to the probation officer's report dated 21st February 2025, the accused is 52 years old and he has worked in several blue-collar jobs in Mombasa. During his time away from home, his brother sold land to the victim but the victim had encroached a part of his land. The victim forced the accused out of his land and he moved in with his aged mother. The accused was not happy with this action by the victim and so he attacked him and hit him with a panga and rungu on his head.
8. The victim succumbed to the injuries sustained. The accused is remorseful and he has sought a non-custodial sentence from the court. His family has left the decision to the court as the accused is liable to carry his own cross. The family of the victim prefer that the accused is handed a custodial sentence. They are bitter about losing the victim, who was a breadwinner and has left behind 2 wives and several children. The report did not favour the accused person for a non-custodial sentence.

The Facts

9. The facts of the case are as follows:

On the 3rd November, 2024 at Isako Village, Gasavari Sub-Location, Mutuobare Location, Mbeere South Sub County within Embu County, at about 8am the accused person was at home when the deceased trespassed on his mother's land where he was staying. The accused person asked him what he was doing there, where upon a quarrel ensued between them, and the deceased attacked him with blows. The accused picked up a club and panga, and used them to assault the deceased on the head, and all over the body.

The deceased became unconscious, fell down and died at the scene. The accused immediately reported the matter to the police who then arrested him. The police visited the scene and removed the deceased's body to Embu Level 5 Hospital mortuary, There, the post-mortem was conducted on 6th November, 2024 by Dr. Ndirangu who formed the opinion that the cause of death was due to severe head injury following assault using a sharp object.

On 12th November, 2024 the accused person was examined by Dr. J.N. Thuo Consultant Psychiatrist at the said hospital, who found him mentally fit to stand trial.

The accused person was charged with the offence of murder, which has now been reduced to manslaughter.

Analysis

10. The court in this matter is guided by the provisions of the [Judiciary Sentencing Policy Guidelines](#) 2023 with amendments to take into account the direction of the Supreme Court in the case of [Muruatetu & another v Republic; Katiba Institute & 5 others \(Amicus Curiae\)](#) (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR).



11. Under section 205 of the *Penal Code*, the accused is to face a punishment of life imprisonment. The Court has considered the holding in the case of *Manyeso v Republic* [2023] KECA 827 (KLR) where the Court of Appeal held that a life sentence is indeterminate and unconstitutional as it constitutes an unjustifiable discrimination and is thus unfair and repugnant to the principle of equality before the law. As such a life sentence cannot be meted in this case.
12. The prosecution has recommended a punishment of 10 years imprisonment while the accused has prayed for a lenient sentence. He is a first offender and the prosecution conceded that the accused was provoked by the deceased.

Conclusion and Disposition

13. The court must balance the rights of the accused to a lenient sentence with the rights of the victim's family. The Court must also consider the interests of the Public. Based on information in the POR, there is the risk of retaliation if the accused is handed the non-custodial sentence as he has requested. In my view, the circumstances surrounding the death of the deceased and the relationship between the accused and his family and community, speak in favour of a custodial sentence, in the interest of justice.
14. Accordingly, taking all the foregoing into account, the accused is hereby sentenced to a term of 7 years imprisonment, which term shall, taking into account time spent in custody, commence on 14th November, 2024. The accused shall serve the last two (2) years of his sentence term serving non-custodial sentence in community service under supervision of the Embu County Probation Officer.
15. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 2ND DAY OF APRIL, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

Accused in person.

Mwinja holding brief for Kithinji for Accused

Ms. Nyika for State

Francis Munyao - Court Assistant

