



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Amukanga (Criminal Case E004 of 2024)
[2025] KEHC 6061 (KLR) (15 May 2025) (Sentence)**

Neutral citation: [2025] KEHC 6061 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE E004 OF 2024**

JN KAMAU, J

MAY 15, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

WYCLIFFE ANDEBE AMUKANGA ACCUSED

SENTENCE

1. The Accused person herein was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* Cap 63 (Laws of Kenya). He entered into a Plea Bargain Agreement on 17th December 2024 whereupon this court convicted him of the offence of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*.
2. The facts of the case were that on 7th February 2024 at about 2200 hours, Johnstone Makate Jacob alias Sila (hereinafter referred to as the “deceased”) who was a person living with disability was sleeping with his wife, Joyce Mbaya Liboyowa, when they were awoken by the Accused person who was a brother to the deceased and was residing in Mumias. The Accused person demanded that they open the door for him. Out of fear and because the Accused person was known for a violent past, the deceased’s wife collected the machetes in the house and went to hide the said machetes at the fence. The deceased entered the house using the back door that the deceased’s wife had used.
3. When she returned to the house, she found the Accused person inside the house and he chased her away. She raised the alarm but the neighbours did not respond. She called one Jared Olleta, a friend to the deceased who went to the deceased’s home and found the Accused person in the house talking to himself, saying that he was looking for a jembe to bury the deceased.
4. With the help of a torch, the said Jared Olleta saw the deceased lying down about 20m from the house. The deceased was vomiting blood and was unable to talk. His clutches were next to him. The said Jared Olleta then sought help to take him to the hospital.



5. When members of the public arrived at the scene, the Accused person emerged from the house and angrily ordered them to leave, which they did. The said Jared Olleta informed the area Assistant Chief of what had transpired. The police were also informed of the incident.
6. On the morning of 8th February 2024, the Accused person made a report of the sudden death of the deceased at Embali Police Station and explained that on the night of 7th February 2024, he slept in the same house with the deceased who was well but that in the morning, he realised his brother was dead.
7. The Police visited the scene and the Investigating Officer noted that the deceased had a cut above the left eye and blood on the nose. The scene was documented and the deceased's body was removed to Coptic Hospital Mortuary.
8. The postmortem was carried out on 10th February 2024. The Pathologist formed the opinion that the cause of the deceased's death was lung collapse secondary to trauma caused by a sharp object. The Postmortem Report dated 10th February 2024 was produced as Exhibit 1.
9. From the investigations, it was established that the Accused person had come home and picked a quarrel with the deceased due to the deceased's decision to reside in their parents' house. The Accused person was then charged with the offence of murder.
10. Having entered into a Plea Bargain Agreement, the State recommended a sentence of twenty (20) years imprisonment. The Accused person did not propose the length of the sentence that should be meted out to him.
11. In his mitigation, the Accused person pointed out that he travelled from Mumias and found the deceased drunk. A disagreement arose between them because the deceased had destroyed his own property and that of their mother. He pushed the deceased and left him sitting on a chair. He asserted that the deceased had been involved in an accident and had been sickly since then. He contended that he reported the incident when he found the deceased.
12. He asked this court to be lenient on him because a long sentence would be double jeopardy to the family following the deceased's death. He pointed out that he has since lost the job he had at Mumias. He said that he was an orphan and had a wife and three (3) children. He expressed remorse for having committed the offence and prayed for a non-custodial sentence. He undertook to advocate the need to be a law-abiding citizen at all times.
13. On its part, the Prosecution asserted that the Pre-Sentence Report was negative as the Accused person's cousin and the Assistant Chief painted him as a criminal. It added that he had also lost ties with the community.
14. It averred that the deceased was a person living with disability (PWD) for which the Accused person ought to have treated him humanely. It urged this court to consider the lung collapse injury that the deceased sustained and mete out to the Accused person a custodial sentence so that justice could not only be done but be seen to have been done.
15. According to the Pre-Sentence Report of Oliver Simiyu, Probation Officer, Vihiga County, that was dated 23rd January 2025 and filed on 31st January 2025, the Accused person was thirty-six (36) years old and was a Christian by religion. He attended Esibakala Primary School but dropped out in Standard Six (6) due to a lack of school fees. He resorted to casual jobs in his local area and eventually moved to Mumias, where he engaged in loading sugar cane in Mumias Sugar Company.



16. Although he was married and with children, he seemed to have lost ties with his wife and the community because before moving to Mumias, he demolished his house and sold the material. He was involved in drug and substance abuse, which affected his relationship with his family members.
17. When he was interviewed by the Probation Office, he admitted to having committed the offence out of a quarrel that ensued between him and the deceased on the grounds that the deceased had sold his iron sheets and a section of his mother's house. He expressed remorse for his action stating that his act was not intentional. He sought for leniency and pleaded with court to give him a chance to be re-integrated back to his family.
18. None of his siblings were available for the home enquiry. However, the social inquiry of his cousin indicated that the Accused person's action to kill his brother was intentional as they had had long-term fights. He had stated the Accused person rarely visited home and that when he did, it sparked a lot of wrangles between him and the deceased. He recommended that a custodial sentence be meted out against the Accused person as the community was still bitter and was not receptive to him.
19. The Local Administration and the community averred that he was a long-term criminal who had gone into hiding after being mentioned for the offence of robbery with violence. They pointed out that he killed his brother just shortly after coming out of his hiding place. They added that he was currently homeless and no one was available at home to re-integrate him or support his rehabilitation. They were not receptive to him. There was apprehension that if he was released on a non-custodial sentence, he would probably be lynched. They urged this court to mete out to him a custodial sentence.
20. The Probation Officer did not find the Accused person to have met the threshold of being considered for community rehabilitation. It recommended that an alternative sentence be deemed appropriate.
21. Notably, sentencing is one of the most intricate aspects of trial. Indeed, a trial does not end unless a sentence has been meted out. The principle of sentencing is fairness, justice, proportionality and commitment to public safety. The main objectives of sentencing are retribution, incapacitation, deterrence, rehabilitation and reparation. The Sentencing Policy Guidelines in Kenya have added community protection and denunciation as sentencing objectives. The objectives are not mutually exclusive and can overlap.
22. It was also important that the sentence communicate to the community, condemnation of his criminal act. The sentence would indirectly send a strong signal to deter would be offenders from committing such an offence. The sentence also had to be one that was hinged on retributive justice for the secondary victims.
23. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of his offence at the time of sentencing him, chances of the Accused person being reintegrated in the society would be next to impossible as there were possibilities of being harmed.
24. Killing someone is an abomination in the society and that explained why the deceased's extended family and community did not want him released on a non-custodial sentence. Justice not only needed to be done but it had to be seen to be done.
25. It was clear from the facts of the case and the Pre-Sentence Report that the Accused person killed the deceased. They were biological brothers. The Social Inquiry showed that he killed the deceased for having sold his iron sheets and part of their deceased mother's house. He repeated this version of what transpired both during the Social Inquiry and mitigation. He committed the offence out of extreme anger. However, the anger that he expressed was not worth the trouble.



26. The circumstances of the murder were gory as the deceased was physically challenged. Although the Accused person asserted that he only pushed the deceased, implying that he may have died due to his sickness following an accident, it was evident from the Postmortem Report that he injured the deceased with a sharp object leading to bilateral lung collapse. The attack was unprovoked and targeted as there was indication of a long-standing feud between him and the deceased. The use of a sharp object was proof of deliberate intention to kill the deceased person, which amounted to murder.
27. However, having considered the Accused person's mitigation, the Prosecution's response thereto, the Pre-Sentence Report and bearing in mind that sentencing was the sole discretion of the court, this court came to the firm conclusion that a sentence of twenty (20) years imprisonment was suitable and adequate herein purely because the Accused person entered into a Plea Bargain Agreement. If the matter had proceeded as a murder case, this court would have meted out to him a stiffer sentence.
28. Going further, this court was mandated to consider the period that he spent in remand while his trial was on going in line with Section 333(2) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya).
29. The said Section 333(2) of the *Criminal Procedure Code* provides that:-
- Subject to the provisions of section 38 of the *Penal Code* (cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code
- Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody” (emphasis court).
30. Further, the Judiciary Sentencing Policy Guidelines provide that:-
- “The proviso to section 333 (2) of the *Criminal Procedure Code* obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.”
31. The requirement under Section 333(2) of the *Criminal Procedure Code* was restated by the Court of Appeal in *Ahamad Abolfathi Mohammed & Another vs Republic* [2018] eKLR.
32. The Accused person was arrested on 8th February 2024. The court declined his application for bail/bond on 16th April 2024 due to a negative Pre-Bail Report dated 4th April 2024 and filed on 15th April 2024, and directed that he was at liberty to file a fresh application at a later stage. He never filed any other application seeking bond/bail again. He was convicted on 17th December 2024. As he never left custody since he was arrested, the period that he spent in custody should be taken into consideration while computing his sentence.

DIVISION - Disposition

33. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to twenty (20) years imprisonment to run from the date of this Sentence.



34. For the avoidance of doubt, the period between when he was arrested on 8th February 2024 and 14th May 2025 be and is hereby taken into account while computing his sentence in line with Section 333(2) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya).

35. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 15TH DAY OF MAY 2025

J. KAMAU

JUDGE

