



REPUBLIC OF KENYA



**Republic v Mulama (Criminal Case E013 of 2024)  
[2025] KEHC 6062 (KLR) (15 May 2025) (Sentence)**

Neutral citation: [2025] KEHC 6062 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL CASE E013 OF 2024**

**JN KAMAU, J  
MAY 15, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**GODFREY MASECHE MULAMA ..... ACCUSED**

**SENTENCE**

1. The Subject 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 13th February 2025, 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 18th June 2024, Henry Angatia Ihaji (hereinafter referred to as the “deceased”) arrived home from Mumias, where he was working. He stayed at the house of his brother, Josephat Nandwa, as he had not built his house. He also kept his belongings in the said house.
3. On 24th June 2024, at around 1.00 p.m., he and Josephat Nandwa went to Makuchi Shopping Centre to buy food. When they returned to the house, the deceased discovered that his bag was missing. They suspected the Subject, who was their nephew, of having stolen it because they had not locked the door to the house, and he was often accused of committing crimes.
4. The deceased went to the Subject’s house, which was nearby, and came back with his clothes. He informed Josephat Nandwa that he had gained entry to the Subject’s house by breaking a window and exited through the same window after he found his clothes inside the house. They then rested under a tree within the homestead.
5. Shortly thereafter, the Subject arrived armed with a panga and a piece of timber. He demanded to know from the deceased why he had broken into his house, and a confrontation ensued. The Subject advanced towards the deceased, who was armed with a stone. They started fighting, and the Subject



- hit him on the head with the piece of timber, and he fell down. The said Josephat Nandwa picked a walking stick and confronted the Subject who assaulted him on the right leg and ran away.
6. The said Josephat Nandwa moved to where the deceased was lying and saw that he had been injured on the left hand and on the head, which was swollen. He called members of public who assisted him to take the deceased to Muhudu dispensary. They were referred to Jumuia Friends Hospital Kaimosi, where the deceased was stitched on the head. They did not have money to do an x-ray and went back home.
  7. On 27th June 2024, at around 1700 hours, the deceased's health deteriorated and he was rushed back to Jumuia Friends Hospital Kaimosi, where he was pronounced dead on arrival. The matter was reported at Cheptulu Police Station. The Subject was arrested on the same day.
  8. On 28th June 2024, investigations commenced, and the Police Officers visited the homestead of Josephat Nandwa and recovered the piece of timber the Subject had used to hit the deceased with.
  9. A postmortem examination on the body of the deceased was carried out on 7th July 2024. The Pathologist formed the opinion that the cause of his death was severe head injury secondary to blunt trauma.
  10. After the investigations were concluded, the Subject was charged with the offence of murder. The Postmortem Report dated 7th July 2024 was produced as Exhibit 1.
  11. Having entered into a Plea Agreement, the Subject urged this court to sentence him to three (3) years' probation while the State recommended that he serve three (3) years' imprisonment.
  12. In his mitigation, the Subject pointed out that he was a minor and a first-time offender. He expressed remorse for the incident that happened and agreed that it was the deceased person who started the chaos before the incident took place. He averred that he was of good conduct and prayed for leniency in the sentencing. He added that he was willing to change and go back to the society.
  13. On its part, the Prosecution submitted that the subject be sentenced to Probation so that he could be rehabilitated during the probation period, as it had been indicated in the Pre-Sentence Report. It explained that the home environment was hostile and that the family members had proposed to his father that he sell the land so that they could relocate. It averred that the deceased was a paternal uncle to the subject and asked the court to look at the injuries that the deceased sustained. It prayed that justice be dispensed and be seen to have been done to the deceased and the secondary victims.
  14. According to the Pre-Sentence Report of Mariam Korir, Probation Officer, Vihiga County, that was dated 13th March 2025 and filed on 14th March 2025, the Subject was seventeen (17) years old. He studied at Bulukhome Primary School from Nursery to Class six (6) and then moved to Kapkatoi Primary School, where he sat for his Kenya Certificate of Primary Education (KCPE). He joined Kaptik Secondary School, where he dropped out at Form Two (2) due to challenges of being raised by a step-mother and lack of school fees.
  15. He was still single with no dependants due to his age. He engaged in brick making and other casual jobs in the community to meet his personal needs. He was of good health. He abused drugs such as bhang. He was a first-time offender.
  16. Although he admitted having committed the offence, he stated that he acted out of self-defence. He regretted the incident that led to the death of his paternal uncle. He understood that the family members would be reluctant to accept him back home and hoped that one of his aunties would accept him.



17. The family was bitter that their own child had killed their kin. They explained that the Subject had become unruly and disobedient to them, but that they did not expect that he would kill one of their own. They pointed out that the family had disintegrated from the heinous act that he had committed, and that his father was not allowed to mingle with the family. They were opposed to welcoming him back and urged the court to find a place to take him.
18. The Local Administration and the community reported that the Subject lived in the community well until he started abusing drugs, which changed his character from a polite person to an aggressive person. They opined that although he was a child, they would not recommend community rehabilitation on his part because of the gravity of the offence and the fact that he would not be safe as his paternal family did not want anything to do with him and also the customs and traditions could not allow him back into the community.
19. The Probation Office recommended that the Subject be considered for a non-custodial sentence, that is, probation for three (3) years, upon which (sic) he would serve one (1) year at Kimumu Senior Probation Hostel. It explained that the said institution would offer a temporary stable environment as he underwent guidance, counselling, and formal education as the office engaged the family on an alternative place for his reintegration.
20. 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.
21. 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.
22. 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 Subject being reintegrated into the society would be next to impossible as there were possibilities of being harmed.
23. Killing someone is an abomination in the society, and that explained why his 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.
24. It was clear from the facts of the case and the Pre-Sentence Report that he killed the deceased. The deceased was his paternal uncle. Although he was the aggressor, he tried to seek the sympathy of this court by stating that he acted out of self-defence. He stole from the deceased and accosted him, demanding to know why he had broken into his house and further hit him with a stick, causing injuries that led to his death.
25. This court rejected his assertion that he acted out of self-defence as it was not applicable herein. He ought to bear the consequences of his action because if he were not punished, he would never value human life.



26. Notably, the Subject was seventeen (17) years old at the time of committing the offence, hence a child in conflict with the law. The Sentencing Policy Guidelines, 2023 provide as follows:-

“3. The death penalty cannot be imposed on children in conflict with the law, nor can they be imprisoned. However, a child can be committed to a rehabilitation school or a borstal institution. Rehabilitation schools cater for children aged from twelve to sixteen years. Borstal institutions cater for children aged fifteen years to seventeen years. Other orders such as fines, probation, committing the child to a fit person for care, placement in an educational institution or vocational training programme and more, are all possible options under section 239 of the *Children Act*, 2022.

3. In deciding to place a child within an institution e.g., a borstal institution, the court must be satisfied that the offence crosses the custody threshold and must consider the impact of such a sentence on their leaving their existing care arrangements as well as whether the disposal could exacerbate any underlying issues – this is particularly important where there are concerns about the effect on vulnerable children with risks of self-harm including suicide. Any restriction on liberty must be commensurate with the seriousness of the offence.

3.1.19 In terms of practical and logistical considerations, before placing a child in a particular borstal institution, the court shall be guided by a probation officer’s report on the availability of space in that institution. A child should only be placed in an institution if there is available accommodation and as much as practicable, in the institution closest to their home.

3. The order placing a child in a rehabilitation school or borstal institution must expressly indicate that the child is to be transferred to the committed institution as soon as possible but in any event not later than 24 hours from the date of the order(emphasis court).”

27. Having considered the facts of this case, the Subject’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 three (3) years’ probation was suitable and adequate herein purely because the Subject had already surpassed the age in which he could be institutionalised at a borstal school.

28. As was recommended by the Probation Officer, it was prudent that he serve one year at Kimumu Senior Probation Hostel as a temporary environment as the office engaged his family for an alternative place for his reintegration.

29. It is unfortunate that the Subject had committed such a heinous crime, but could not be sentenced to a term that was commensurate with the offence because he was a minor. He was escaping with a slap on the wrist. However, this court hoped that he would have in his heart to appreciate the gravity of the offence that he had committed.

## Disposition

30. Accordingly, it is hereby directed that the Subject be and is hereby sentenced to three (3) years’ Probation to run from the date of this Sentence.



31. For avoidance of doubt, the Subject be and is hereby placed at Kimumu Senior Probation Hostel within twenty-four (24) hours for him to serve his one (1) year probation period at the said hostel as the Probation Office, Vihiga, engages his family on an alternative place for re-integration.

32. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS 15<sup>TH</sup> DAY OF MAY 2025**

**J. KAMAU**

**JUDGE**

