



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Litsuvi (Criminal Case E012 of 2022)
[2025] KEHC 6120 (KLR) (14 May 2025) (Sentence)**

Neutral citation: [2025] KEHC 6120 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE E012 OF 2022**

JN KAMAU, J

MAY 14, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

ENOS LITSUVI 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 7th April 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 6th December 2022 at around 2000 hours, Amos Kawai and Kennedy Mwangi were watching a football match at their home when they heard someone scream from their neighborhood. They rushed out and realised the screaming was coming from Mzee Ojenyi's home. They went to see what was happening. With the help of electricity lights from the neighbour's house, they saw Solomon Ambasa Ojenyi alias Reuben Ambasa Ojenyi (hereinafter referred to as "the deceased") lying on the ground, bleeding from his left hand. They also saw his brother, the Accused person herein, standing about three (3) meters from him while armed with a blood-stained piece of wood.
3. When the Accused person saw them, he went to his house. The said Amos Kawai rushed to the home of Josephat Rogovane, also a brother to the deceased and informed him of what had transpired. They went back to the scene and assisted the deceased to his house. They were unable to get means to take him to the hospital and agreed to wait until morning.
4. The said Josephat Rogovane stayed with the deceased till late in the night and later went to his house to sleep. The following morning at about 0500 hours, he went to check on the deceased to take him to



- the hospital, but he found that he had already passed on. He informed their parents and the Accused person about his death, whereupon the Accused person surrendered himself at Lyaduywa Police Post.
5. The police officers visited the scene on the same day and recovered the blood-stained piece of wood. They removed the body of the deceased to the Vihiga County Referral Hospital Mortuary, and investigations commenced.
 6. A postmortem examination on the body of the deceased was carried out on 9th December 2022. The Pathologist formed the opinion that the cause of his death was the separation of cervical vertebrae caused by trauma following assault.
 7. After the investigations were concluded, the Accused person was charged with the offence of murder. The Postmortem Report dated 9th December 2022 was produced as Exhibit 1.
 8. Having entered into a Plea Agreement, the Accused person urged this court to sentence him to two (2) years. On its part, the Prosecution recommended a sentence of ten (10) years imprisonment.
 9. In his mitigation, the Accused person pointed out that he and the deceased were biological brothers. He said that this incident had caused a lot of heartache. He expressed remorse and averred that the incident happened when he was not lucid. He asserted that he used to get mentally challenged at times, and he had no intention of killing the deceased. It was his submission that the moment he became lucid, the incident had continued haunting him. He thus prayed for leniency from this court.
 10. On its part, the Prosecution submitted that the Accused person and the deceased were biological brothers. It stated that the secondary victims regard the Accused person as an outcast. It averred that the home environment is hostile. It asked that the court metes put upon the Accused person a custodial sentence. If further asked, the court to look at the Pre-Sentence Report that was negative and the injuries that the deceased sustained. It submitted that this would ensure that justice would not only be done, but it would be seen to have been done to the deceased's family.
 11. According to the Pre-Sentence Report of Oliver Simiyu, Probation Officer, Vihiga County, which was dated and filed on 13th May 2025, the Accused person was forty-five (45) years of age and attended Muningi Primary School until Class Eight (8). He did not attend secondary school due to a lack of school fees. He never attained any vocational training, but he did driving classes. He relocated to Nairobi, where he worked as a shop attendant for seven (7) years. He returned to his ancestral home in 2009 and started farming and keeping cattle. He separated from his wife, with whom he had two (2) children, and she remained in Nairobi.
 12. He was living alone before his arrest. His house was burnt by the community after the incident. Although he associated himself with the Episcopal Church at Mzulyu, he rarely attended Church. He abused alcohol and drugs but he stopped following the doctor's advise.
 13. He was reported to have assaulted his parents, siblings, and immediate neighbours. He was even said to have attempted to rape his own mother. He admitted to having been arrested, but he was acquitted. He said that he had been psychotic since 2012. He was a person living with disability as he was mono-eyed.
 14. He regretted having committed the offence and sought forgiveness. He took responsibility for the deceased's death, which he said was accidental. He alleged that the deceased took advantage of his mental condition to destroy his farm produce and sell his cattle but he never revenged against him. He averred that the deceased hit a tree stem while he was drunk and died as a result of the injuries that he sustained. He alluded to long-standing differences between him and the deceased.
 15. The secondary victims regarded the Accused person as an outcast and wanted nothing to do with him. They asserted that the differences between the deceased and the Accused person were a result of sibling



- rivalry. The Accused person's father resented him, was unforgiving, and was extremely negative towards him. The Accused person's brother blamed the Accused person for having hit the deceased with a blunt stick at the back of his neck. He said that the Accused person was being escapist when he associated the incident with his mental challenges.
16. The Local Administration was not familiar with the Accused person, although it was aware of the incident. The Area Assistant Chief alluded to the mental illness of the Accused person but also said that he was a serious farmer and cattle keeper. He said that the deceased used to take advantage of the mental condition of the Accused person to steal his farm produce. He was apprehensive that there would be more animosity if the Accused person learnt that his cows were sold and his house destroyed by the family members. He stated that the community was still very bitter and that he would be lynched if he went back home.
 17. The Probation Office asserted that the deceased's death was a result of sibling rivalry over family resources and that the long-time animosity was due to drug and substance abuse on the part of the Accused person. It was emphatic that the Accused person intentionally killed the deceased. It averred that as the Accused person was visually impaired, homeless, and lacked goodwill and family support system, and the community was still bitter and unwilling to receive him back and would lynch him, reintegration was not possible. It therefore ruled out community-based rehabilitation and asked this court to dispense alternative justice in the way it deemed appropriate.
 18. 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.
 19. 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.
 20. 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.
 21. Killing someone is an abomination in the society, and that explained why the deceased's 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.
 22. It was clear from the facts of the case and the Pre-Sentence Report that he killed the deceased, who was his biological brother. It, however, appeared that the deceased took advantage of his mental condition to steal from him. It was not clear to this court if he was mentally stable at the time that he committed the offence. However, there was an inference that he had mental issues, as was conceded by the Local Administration in the Pre-Sentence Report. In the absence of evidence that he was mentally unstable when he committed the offence, this court could not exonerate him from his actions. He had to bear the consequences.
 23. Having considered the facts of this case, 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 ten (10) years imprisonment



was suitable and adequate herein purely because the Accused person entered into a Plea Bargain Agreement, the fact that there was an indication that he suffered from mental instability and he was irked by the deceased having taken advantage of his mental condition.

24. Going further, this court was mandated to consider the period that he spent in remand while his trial was ongoing in line with Section 333(2) of the [Criminal Procedure Code](#) Cap 75 (Laws of Kenya).

25. 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)”.

26. 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.”

27. The requirement under Section 333(2) of the [Criminal Procedure Code](#) was restated by the Court of Appeal in *Ahamad Abolfathi Mohammed & Another v Republic* [2018] eKLR.

28. The Accused person was arrested on 7th December 2022. The Pre-bail Report dated 8th December 2023 and filed on 13th December 2023 was negative about his being released on bond. He was therefore not granted bond terms by this court. He was convicted 7th April 2025 and sentenced on 14th May 2025. This was a period that, therefore, ought to be taken into consideration while computing his sentence.

Disposition

29. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to ten (10) years imprisonment to run from the date of this Sentence.

30. For the avoidance of doubt, the period between when he was arrested on 7th December 2022 and 13th May 2025 before he was sentenced 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).

31. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 14TH DAY OF MAY 2025

J. KAMAU

JUDGE

