



**Republic v Naze alias Kuks (Criminal Case E002 of 2024)
[2025] KEHC 6298 (KLR) (14 May 2025) (Sentence)**

Neutral citation: [2025] KEHC 6298 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE E002 OF 2024**

JN KAMAU, J

MAY 14, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

LAWRENCE SHAMOLA NAZE ALIAS KUKS 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). When the matter came up for hearing of the Prosecution’s case on 18th December 2024, the Accused person indicated that he wished to enter into a plea bargain. He entered into a Plea Bargain Agreement on 13th May 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 20th January 2024, Calistus Shamola alias Moninga (hereinafter referred to as “the deceased”) and the Accused person were at Vincent Musalia’s home when the deceased picked a quarrel with the Accused person over gumboots he had lent him.
3. At that time, the deceased person had a panga. This angered the Accused person left and armed himself with a kitchen knife. He dared the deceased to follow him if he wanted a fight. The deceased then followed him, and they continued quarrelling.
4. Vincent Musalia raised alarm that he had seen the deceased and accused both lying down by the roadside side and members of the public rushed to the scene. The accused was lying facing up while bleeding from the head, while the deceased was lying facing down bleeding from the left side of the chest, and a panga and a blood-stained kitchen knife was between the deceased and the Accused person.
5. One Edward Inyanje Zedekia, with the help of another person, rushed both the deceased and Accused person to Muhudu Clinic, where they were referred to Jumuia Friends Hospital, where the deceased



was pronounced dead on arrival, while the Accused person was treated and discharged. One Welling Ingotsi picked the panga and knife from the scene and took them to Cheptulu Police Station, where he made a report.

6. From the investigations, there was a dying declaration made by the deceased to the said Christine Asisa Asusu. The Accused person was later charged with the offence of murder. The Police conducted an investigation and visited the scene.
7. On 24th January 2024, a postmortem was done and the doctor formed an opinion that the cause of the deceased's death was lung collapse secondary to a stab wound. The Postmortem Report dated 24th January 2024 was produced as Exhibit 1.
8. Having entered into a Plea Agreement, the Accused person urged this court to sentence him to four (4) years. On its part, the State recommended a sentence of fifteen (15) years imprisonment.
9. In his mitigation, the Accused person pointed out that he was a father to a minor and had a responsibility to cater for the minor's needs. He further informed the court that the incident was an accident and that he did not intend to kill the deceased, who was his brother since they were related.
10. He said that he was remorseful and prayed for leniency. He said the incident had greatly haunted him and that the society and family were equally damaged by his act. He asserted that he had learnt his lesson and prayed for a light sentence.
11. On its part, the Prosecution urged this court to mete upon the Accused person a custodial sentence as had been recommended by the Probation Officer. It pointed out that the Pre-Sentence Report was negative. It averred that the deceased's family was still bitter with him and wished that he be punished by way of a custodial sentence. They asserted that they did not wish to be associated with him at any cost. It added that he lacked community or family support, and his home environment was still hostile, and his safety was not guaranteed.
12. The Prosecution urged this court to mete out to the Accused a custodial sentence to help the deceased's family to heal and for him to be rehabilitated as he was a drug user. It further asked the court to consider the injuries that the deceased sustained, a lung collapse.
13. According to the Pre-Sentence Report of Mariam Korir, Probation Officer, Vihiga County, which was dated 1st April 2025 and filed on even date, the Accused person was thirty-five (35) years old. He attended Mulukhombe Primary School. He did not, however, continue with secondary education due to a lack of school fees. He travelled to Nairobi to engage in casual construction jobs and returned home in 2013. He stayed briefly and returned to Nairobi in 2015 to seek job opportunities. He only managed to engage in casual labour and eventually came back home in 2017.
14. He was married briefly to one Mackline Lungechi, with whom they had one (1) child before they separated. The child was said to be in grade seven and under the custody of her maternal grandmother. The Accused person cohabited with Maurine Minayo for three (3) years before parting ways again. That union was blessed with one (1) child who was currently in grade six.
15. He engaged in boda boda work to earn a living until 2017. He had skills in plumbing that he acquired through apprenticeship in Nairobi.
16. He admitted to having been involved in chang'aa consumption, though this had not affected his health or productivity. He, however, blamed it for the commission of the offence. The Probation officer concluded that his character was influenced by alcoholism.



17. He admitted the offence and stated that he disagreed with the deceased, who was his nephew, over a pair of gum boots that he had worn and got torn. The deceased's wife said that she would pay Kshs 300/= while the deceased paid Kshs 200/= for the gumboots. The Accused person did not remit his money.
18. After some days, the deceased went to demand the money, and that is when a fight broke out between them. He averred that the deceased removed a knife and stabbed him in the hand, and he also removed a kitchen knife and stabbed the deceased several times in the chest.
19. Both the Accused and the deceased were said to have been drunk at the material time. From the assessment of the Probation Office, the Accused person's drug use may have escalated the disagreement that he had with the deceased.
20. The Accused person admitted to having committed the offence and sought forgiveness. He expressed remorse and asked this court to mete out to him a lenient sentence.
21. The secondary victims were still bitter due to the death of the deceased. The Accused person's brother lamented that he would not have to take care of the deceased's children. He asked this court to punish the Accused person for the offence that he committed. They lamented that he had threatened that someone would die, damaged a banana plantation, and assaulted his brother's wife and his own mother. They were emphatic that he would be lynched if he was released from custody.
22. The Local Administration and the community regarded the Accused person as an aggressive person, especially after consuming alcohol. They were not willing to accept him into the community.
23. The Prosecution was of the view that the Accused person lacked family and community support, which formed an integral part of community reintegration. It urged this court to dispense with the matter as it deemed fit, as he did not merit community rehabilitation.
24. 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.
25. 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.
26. 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.
27. Killing someone is an abomination in the society and that explained why his family, the Local administration, and community did not want him released on a non-custodial sentence. They were all very bitter and had ostracised him. Justice not only needed to be done, but it had to be seen to be done for the deceased.
28. Even so, this court recognised that it was the deceased who first cut the Accused person on the hand according to the Pre-Sentence Report. The Plea Agreement showed that the deceased stabbed the Accused person in the chest. This was a sensitive and dangerous place to stab someone. On his part, the Accused person stabbed the deceased on his head. It was clear that they both intended to inflict



serious injuries on each other, serious enough to have caused both of them to be rushed to the hospital, with the subsequent death of the deceased.

29. 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 ten (10) years imprisonment was suitable and adequate herein purely because the Accused person entered into a Plea Agreement and the fact that the incident appeared to have been as a result of an affray. This incident was not worth it, considering that the fight was over gumboots that cost Kshs 500/=.
30. 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).
31. 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).
32. 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.”
33. The requirement under Section 333(2) of the [Criminal Procedure Code](#) was restated by the Court of Appeal in [Abamad Abolfathi Mohammed & Another v Republic](#) [2018] eKLR.
34. The Accused person was arrested on 20th January 2024. He was first arraigned in court on 9th February 2024. In view of the negative Pre-Bail Report by Bernard Musitia, Probation Office Vihiga, dated 3rd April 2024 and filed on 4th April 2024, this court declined to grant him bail/bond. He was convicted on 13th May 2025. The period he had spent in remand before he was sentenced, therefore, ought to be taken into account while computing his sentence.

Disposition.

35. 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.
36. For the avoidance of doubt, the period between 20th January 2024 and 13th 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).

It is so ordered.

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



J. KAMAU
JUDGE

