



**Republic v VIMM (Criminal Case E001 of 2024)
[2025] KEHC 5689 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5689 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL CASE E001 OF 2024
FN MUCHEMI, J
MAY 8, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

VIMM ACCUSED

RULING

1. The accused person pleaded guilty to a lesser charge of manslaughter following signing of the plea agreement that was filed in court on 11th March 2025. The offence was committed on the 7th day of January 2024 according to the charge.
2. The accused person admitted killing the deceased by stabbing him to death with a panga at Magogoni Area in Thika East sub county within Kiambu County.
3. The accused person is a son of the deceased herein. On 6th January 2024, the deceased left his home in Thika and went to pick his son, the accused for specialized medical attention upon receiving a report from Dedan Kimathi University Nyeri that his son was unwell. The accused was pursuing a degree course at the said University. The deceased accompanied by his work mate and neighbour one Simon Isika. Upon reaching the institution, the attendant doctor gave them a medical referral letter of the accused person addressed to any hospital of choice with a psychiatric unit. The three persons drove back home to Thika. The deceased gathered together his family being his wife Jacinta Njeri Maliti and their daughter Mercy Wanjiru Maliti to welcome the accused person. The deceased went to bed to rest leaving the accused person under the watchful eye of his mother and sister in the sitting room. The accused person looked calm as he talked to his mother and sister. He sat on the sofa as his mother and sister engaged him about his well being and school life when he suddenly began to undress and started charging towards his sister who escaped to the deceased's bedroom seeking for help. The deceased told the accused person to dress up while his daughter, Mercy managed to escape leaving the parents behind.



4. A commotion ensued between the deceased and the accused person whereby the accused person overpowered the deceased with blows on his face. The wife of the deceased tried to intervene but the accused person punched her on the face and she ran out of the house for her safety leaving behind the accused person and the deceased.
5. The accused person fought the deceased inflicting serious injuries on his neck and head using a panga which caused his death. The accused person then began pursuing his mother and their neighbour one Samuel Mbugua went to the scene and shouted at the accused person to stop the violence. The accused person dropped the panga and began chasing his mother and the neighbour managed to arrest the accused person and dress him up. After a while members of the public responded to the screams for help and went to the home of the deceased. To their utter shock, they found the deceased on the bedroom corridor lying lifeless his face on the floor in a pool of blood. Officers from DCI Thika East were contacted and they went together with officers from the crime scene. They recovered a panga believed to be the murder weapon, about 30 metres from the place the deceased's body lay.
6. A post mortem was conducted on 10/1/2024 and it was established that the deceased died due to partial decapitation due to sharp force trauma to the neck and injury due to both sharp and blunt force trauma to the head.
7. The accused person was placed in custody at Ngoliba police station and later taken to Thika Level 5 Hospital for mental assessment on 25th January 2025. He was found unfit to take plea due to a mental disease. He was taken to Mathare Hospital for treatment. The accused person underwent a further mental assessment and was found fit to take plea on 9th September 2024.
8. The accused person admitted the offence and said in mitigation through his advocate Mr. Tumu that he was very remorseful. Further, he requested for the court's leniency in passing sentence. Mr. Tumu stated that the accused person had sought forgiveness from his nuclear and extended family. The Counsel relied on the case of *Bratty vs A.G. Northern Island* All ER page 532 and urged the court to give him a non-custodial sentence and stated that at the material time, the accused person was suffering from a mental disorder and he was admitted in hospital for 8 months. Mr. Tumu further stated that the accused person suspected that his food or drink was spiked with a drug that aggravated his anger. He stated that the accused person is currently healed and was certified to plead in September 2024. He further stated that the accused person is keen to go back to University and complete his studies, as he was a 3rd year student at Dedan Kimathi University at the time of the incident. He said that the killing was not premeditated. He cited the case of *Republic vs James Kiragu Wambugu Nyeri HC. Criminal Case No. 6 of 2020* whereby the court sentenced the accused to 5 years imprisonment and submits that the accused person ought to be granted a very minimal sentence if at all the court was to consider a custodial sentence.
9. The prosecution said that the accused is a first offender but objected to the court giving a non-custodial sentence as the mother and sister of the accused are still disturbed emotionally and psychologically about the killing of the deceased. The prosecution prays for a custodial sentence that is deterrent enough to serve as a warning to would be offenders.
10. The pre-sentence report dated 25th March 2025 provided that the accused person is a first time offender and admitted to committing the offence. The report further provided his mother and sister acknowledged that he was not in his right frame of mind when he committed the offence whilst they find it difficult to reconcile the fact that the accused person was responsible for his father's death. The report further indicated that the mother and sister of the accused are torn between mourning their loved one and understanding the circumstances that led his killing by his own son. The report provided



that some of the community members and the relatives of the deceased may take justice into their own hands as they believe the accused person ought to receive a life imprisonment sentence. The family hopes that the accused person be granted a lenient custodial sentence that prioritizes his safety while allowing them to prepare for his returning home.

11. I have considered the factors set out in Judiciary Sentencing Policy in regard to sentencing and mitigation of the accused person. In my considered view, a non-custodial sentence is not appropriate having regard to the circumstances of the offence. An innocent life was lost in very brutal circumstances. The family of the deceased is still traumatised. However this court considers that by the act of pleading guilty to the offence, the accused person saved the precious time of the court. This is a factor that the court takes into consideration and mitigates the sentence.
12. It is important to consider that the accused was mentally disturbed and can only be held to be guilty but insane under Section 166 (1) of the *Criminal Procedure Code* the law provide that in such circumstances, the accused be detained under the President's pleasure for an indefinite period. This kind of detention has caused its own challenges to both the convict and the Prison authorities due to the nature of the indeterminate sentence that defeats the objective of sentencing. The objectives are listed in the Judiciary Sentencing Guidelines, 2023 as retribution, deterrence, rehabilitation, restorative justice, protection, denunciation and reintegration.
13. The Court of Appeal has pronounced itself on this indeterminate sentence and in some case substituted the sentence with a definite sentence of imprisonment on grounds that Section 166 and Section 167 of the *Criminal Procedure Code* violates *the Constitution* in that it takes away the functions of the courts on sentencing.
14. I am persuaded by the said school of thought that detaining the accused in prison indefinitely at his young age of twenty one (21) amount to cruel, inhuman and degrading punishment. There is no provision of releasing him from prison at any time in future following sentencing. As such, there are absolutely no chances of being integrated in society even if the accused reformed. The unconstitutionality of this sentence has been declared in several judgments of the Superior Courts.
15. Having considered the foregoing, I am of the considered opinion that it is in the interests of justice to consider reintegration of the accused in this case to give him a chance of undergoing further treatment as he completes his education and serve this nation in the future well as reconcile with the victims who are closely related to him.
16. It is noted that this court called for a pre-sentence report which was filed and is dated 25th March 2025 which indicated that the close relatives of the accused person were scared of him in that they felt their lives would be in danger. However, since then, the attitude of the victims towards the accused could have changed with the passage of time. It is therefore important to have the victims interviewed afresh on sentencing.
17. The accused is hereby referred for a probation/presentence report to be filed within ten 10 days.
18. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 8TH DAY OF MAY 2025.

**F. MUCHEMI
JUDGE**

