



**Prosecution v Wahinya (Criminal Case E006 of 2025)
[2025] KEHC 8998 (KLR) (23 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8998 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL CASE E006 OF 2025
LN MUTENDE, J
JUNE 23, 2025**

BETWEEN

PROSECUTION REPUBLIC

AND

SAMUEL MWANGI WAHINYA ACCUSED

RULING

1. Samuel Mwangi Wahinya, the Accused, was indicted for Murder of Esther Waithera [deceased] contrary to Section 203 as read with Section 204 of the [Penal Code](#). At the outset he denied the allegations. However, subsequently plea bargain was initiated by the prosecutor pursuant to Section 137C of the [Criminal Procedure Code](#).
2. The plea agreement was executed by both the prosecutor and accused person which culminated into the information being reduced to Manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#).
3. Facts of the case were that on 23rd February, 2021 the deceased was sweeping her compound when the Accused, a neighbour, without being provoked jumped over the fence, entered the compound while armed with a wooden stick that he used to hit the deceased. Her granddaughter, Esther, rushed to the scene and managed to snatch the Accused the stick which she threw away. The accused turned to Esther and started assaulting her but she managed to escape and hid inside the house.
4. The accused seized the opportunity to pick the stick again and pursued Esther. She screamed attracting the attention of neighbours who answered the call of distress. On going to the scene, the Accused who was violent chased them away. Esther got the opportunity to go to where the deceased was but she found her unconscious and bleeding from the head. She managed to call her mother Jane Mwangi on phone who advised her to give her first aid.



5. Arrangements were made to take her to hospital. Upon reaching Subukia Hospital she was pronounced dead and the body was moved to Nyahururu County Hospital for preservation.
6. The police visited the scene of the incident and found the Accused at his home who became violent and resisted arrest. However, he was subdued and arrested. Esther who suffered injuries was treated at Subukia Hospital.
7. The Accused was escorted to hospital for mental assessment but was found unfit to plead. Subsequently the court referred him to Mathari Hospital Nairobi for treatment. On 20th June 2023 he was certified fit to plead by Doctor Olando, the Medical Superintendent of Mathari National Teaching and Referral Hospital. On the 13th December, 2023 he appeared before the court and denied having committed the offence.
8. The postmortem conducted on the body of the deceased revealed that the cause of death was severe head injury secondary to blunt force trauma.
9. To capture views of the victims, the community and the Accused, a social inquiry was conducted by the Assistant Director, Probation Nyahururu, Carol Irungu. The Accused is described as an aggressive person who would pelt people with stones. The behavior was attributed to prolonged usage of psychotropic substances, bhang and also alcohol. That the immediate family members have a frosty relationship with the offender and fear for their safety should he be released.
10. The victims were stated to have bought land from the family of the Accused following land clashes in Londiani hence immediate neighbours of the Accused's family. They view the offender [Accused] as a threat.
11. The area chief termed the Accused as a dangerous person to live with hence not acceptable in the community. It was the recommendation of the probation officer that the Accused is not remorseful of the offence and that he gave no justifiable cause of the crime. That the victim family relocated from the vicinity but his own parents, nephews and the community are unwilling to have him back home. For these reasons, a non-custodial sentence was not advisable.
12. In mitigation it is urged that at the time of the offence the Accused suffered from schizophrenia, an inborn mental capacity. That the accused is remorseful. That at the time of the offence the Accused was not able to know the magnitude of the offence. The report filed by the probation officer is dismissed as biased and inconclusive and it did not give names of those interviewed and the alleged nephew. That the Accused is a born again Christian and is now not using any drugs.
13. The facts of the case, recommendation of the probation officer and submissions in mitigation and the repartee have been considered. Section 205 of the [Penal Code](#) provides thus;

“ Any person who commits the felony of manslaughter is liable to imprisonment for life.”
14. The objective of sentencing in administering punishment appropriately includes punishing the offender, deterring future offending, rehabilitating the offender and protecting the public. The interest of both the offender and society must be balanced. Today restorative justice is emphasized because it focuses on repairing the harm caused by the offending behavior rather than solely punishing the offender.
15. On the question of remorse an offender must understand the impact of his action by taking responsibility and thereby make amends. The defence argue that the Accused is remorseful; but,



following the social inquiry carried out he expressed no remorse hence the question of genuine remorse that would lead to behavioral change is in doubt.

16. A sentence must be proportionate to the offence committed. This principle ensures that the punishment is just which would make the public have confidence in the justice system. This is a case where the accused used a wooden stick to attack the deceased. His aggressive behavior then was also manifested in the attack of Esther the deceased's grand daughter physically.
17. However, upon arraignment it was established that he needed medical intervention. Mental health professionalism was required such that he had to undergo treatment at Mathari Hospital.
18. The Accused is a first offender who has saved judicial time by entering into plea bargain with the State. The mental health issue that was apparent later is a mitigating factor. It reduces moral blame worthiness. This therefore calls for a hybrid sentence.
19. The Accused has been in remand detention from the time of his arrest. Section 333[2] of the [Criminal Procedure Code](#) provides thus;

“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”.

20. In [Bukenya v Uganda \[Criminal Appeal No 17 of 2010\]](#) [2012] UGSC3 [29 January 2013] the court stated that;

“Taking the remand period into account is clearly a mandatory requirement. As observed above, this Court has on many occasions construed this clause to mean in effect that the period which an accused person spends in lawful custody before completion of the trial, should be taken into account specifically along with other relevant factors before the court pronounces the term to be served. The three decisions which we have just cited are among many similar decisions of this Court in which we have emphasized the need to apply Clause [8]. It does not mean that taking the remand period into account should be done mathematically such as subtracting that period from the sentence the Court would give. But it must be considered and that consideration must be noted in the judgement”

21. The upshot of the above is that the Accused is sentenced to 7 years imprisonment with effect from 3rd March, 2021. Upon release he will be under probation supervision for a period of 3 years with a view of being reintegrated into the community.
22. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 23RD DAY OF JUNE, 2025.

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L.N. MUTENDE
JUDGE

