



REPUBLIC OF KENYA



**Republic v Mutuku alias 'Kau' (Criminal Case E051 of 2021)
[2025] KEHC 9485 (KLR) (20 June 2025) (Sentence)**

Neutral citation: [2025] KEHC 9485 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E051 OF 2021**

A MSHILA, J

JUNE 20, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

DENNIS MAKAU MUTUKU ALIAS 'KAU' ACCUSED

SENTENCE

1. The accused was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*; upon a Plea Bargain Agreement being entered this charge was then reduced to manslaughter.
2. The Plea Bargain Agreement dated 10th February, 2025 was adopted by the Court upon being satisfied that the accused had understood the contents and that he had executed it voluntarily without promise or benefit and without threats, force, intimidation or coercion of any kind.
3. The accused was charged with having unlawfully killed Hosea Kivindu Wairimu on the 2nd May, 2021 at Kiandutu slums in Thika West Sub-County, within Kiambu County.
4. The facts as read out by the Prosecuting Counsel are as follows; The deceased and s friend had gone to play at a football match; after the game was over they decided to pass-by a muratina joint; the accused was there and he started an altercation with the friend of the deceased over illicit brew belonging to his mother; The deceased tried to stop the verbal exchange by threatening to beat up the accused; a fight ensued between the deceased and the accused; in defence the accused took a knife and lunged at the deceased stabbing him in the stomach; the deceased was rushed to Thika Level 5 but pronounced dead on the same day.
5. The post-mortem was conducted on 11/05/2021 by Dr. Gathaiya and the report revealed that the cause of death was single penetrating sharp force trauma; which is a stab injury inflicted by a knife.



Prosecuting Counsel produced the Post Mortem Report dated 11/05/2021 which was marked as 'PEXh.1'.

6. The accused stated that the facts as narrated were correct and the court proceeded to convict him on his own plea of 'Guilty' for the offence of Manslaughter c/s to Section 202 as read with Section 205 of the *Penal Code*.
7. The accused was represented by Learned Counsel Mr. Ngeresa whereas Mr. Gacharia was the Prosecuting Counsel for the State; Both counsel were invited to make submissions before sentencing.
8. The accused was desirous of conducting the mitigation by himself; his Counsel therefore presented this request to the court and the court found the request to be in order; The accused was then granted the request and allowed to make the said mitigation; In mitigation he submitted that his client had admitted to having committed the offence and had taken full responsibility; the accused was extremely remorseful and prayed for justice to be tempered with mercy; he had readily pleaded guilty at the earliest onset and thus saved on judicial time; the prosecution had no previous records and that the accused be treated as a first offender; counsel urged the Court to consider the age of the accused and prayed for a lenient sentence preferably a non-custodial sentence on the grounds of his youthful age to allow him to reintegrate back into society.
9. Prosecuting counsel submitted that the life that once snuffed out was irrecoverable and it was imperative that the family of the deceased receive justice; the prosecution had no previous records of the convict; a Pre-sentence Report was called for to assist the Court in the sentencing.

Analysis

10. The applicable law on sentencing for the offence of manslaughter is found under the provisions of Section 205 of the *Penal Code* which reads as follows.

“ Any person who commits the felony of manslaughter is liable to imprisonment for life’.
11. It is the duty of this Court to impose a sentence that meets the facts and circumstances of the case; The aggravating factors was the accused's weapon of choice namely a knife; and anger management which clouded his sense of judgment and instead of allowing the legal justice system to take its due course decided to interfere by attempting to engage his errant son who was being frog marched to the police station. The accused ought to have exercised restraint his attempted rescue mission then led to a life being lost; The mitigating factors are the accused's advanced age being seventy-five (75) years of age; by accepting the Plea Bargain Agreement the accused had not wasted judicial time;
12. Having perused the Sentencing Report, it is noted that the accused had not taken any reconciliatory steps with the victims' family; it is noted that the mother of the deceased had not come to terms with the demise of an son and had not forgiven the accused; the members of the community were also still enraged and destroyed the accused's parent's house meaning that they are not willing to admit him back to the community;
13. In the light of the aggravating factors especially anger management and also as a deterrent to those who want to take the law into their own hands to punish presumed offenders, this Court is satisfied and that the accused is deserving of a custodial sentence of Ten (10) years. The Pre-sentencing Report also recommended a custodial sentence.



Findings & Determinations

14. Having taken all factors into consideration this Court makes the following findings and determinations;
- i. The accused is convicted on his own plea of guilty for the offence of Manslaughter;
 - ii. The accused is hereby sentenced to a ten (10) years custodial sentence.
 - iii. The period spent in custody from date of arrest September 22, 2021 be deducted from his term of sentence.

Orders Accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 20TH DAY OF JUNE, 2025.

A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

Magero – Prosecuting Counsel for the State

Ngeresa for the Accused

Accused – present in custody

