



**Republic v Asamba (Criminal Case E016 of 2023)
[2025] KEHC 8240 (KLR) (10 June 2025) (Sentence)**

Neutral citation: [2025] KEHC 8240 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE E016 OF 2023**

**JN KAMAU, J
JUNE 10, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

GODSON ASAMBA 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 25th 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 23rd October 2023, at about 1130 hours, Stanley Jumba Mahiva (hereinafter referred to as the “deceased”) was walking along Lusui-Chandumba road when he met Janet Amiani who was grazing her cattle and they started talking. Suddenly, the Accused person herein came running while armed with a panga and stick. He went past the two (2) and ran towards a nearby river. Shortly afterwards, the deceased proceeded with his journey and when he reached the river, the Accused person came out of the forest and followed him.
3. Janet Amiani then heard someone scream but did not pay much attention to it. However, moments later a motor vehicle stopped by and the driver informed her that there was someone who was injured at the river and needed assistance. She proceeded to the river and on a footpath near the river, she found the deceased bleeding from the neck and face and was struggling to remove his t-shirt.
4. She raised an alarm and went to a nearby homestead to seek help but realised the inhabitants had run after the Accused person. She returned to where the deceased was and realised he was unconscious. Members of public brought the Accused person to where the deceased was and subjected him to mob justice.



5. Police Officers were informed of the incident and they proceeded to the scene and rescued the Accused person. They also recovered the murder weapon, a panga. They took the deceased's body to Vihiga County Referral Hospital Mortuary and investigations commenced.
6. A postmortem examination on the body of the deceased was carried out on 28th October 2023. The Pathologist formed the opinion that the cause of the deceased's death was intracranial hemorrhage secondary to trauma from cut wounds. The Postmortem Report dated 28th October 2023 was produced as Exhibit 1.
7. After the investigations were concluded, the Accused person was charged with the offence of murder.
8. Having entered into a Plea Agreement, the Accused person proposed that he serves a sentence of five (5) years while the Prosecution recommended a sentence of fifteen (15) years imprisonment.
9. In his mitigation, the Accused person pointed out that the incident could be attributed to his mental health and his drug and substance abuse. He did not oppose being granted a custodial sentence because his family had distanced itself from him and because of his safety and that of the community.
10. He prayed that his sentence be accompanied with a mental evaluation so that he could be rehabilitated. He also urged this court to consider the period of one (1) year two hundred and thirty (230) days that he had been in custody while meting out the sentence.
11. On its part, the Prosecution submitted that the deceased's family was still bitter about this incident because the deceased left five (5) children who were now dependent on their mother. They thus opposed a lenient sentence being meted out against the Accused person. It averred that the neighbours had distanced themselves from the Accused person's family following the incident herein.
12. It pointed out that the Accused person was a threat to the community's safety as he often carried a panga or knife and a torch during the day and frightened women and children. It therefore also asked this court to mete out to him a custodial sentence for his own safety and that of the community.
13. According to the Pre-Sentence Report of J. Sahani, Probation Officer, Vihiga County that was dated 27th May 2025 and filed on 4th June 2025, the Accused person was forty (40) years old. He attended Lusui Primary School but dropped out in Class seven (7) due to truancy. Thereafter, he engaged in casual farm work within the community. In 2006, he relocated to Nairobi in search of better opportunities and found work as an unskilled mason. He later secured a casual position as a gardener. In 2021, he began experiencing recurring health issues which prompted him to return to his rural home.
14. He reported improvement following traditional treatment and thereafter resumed casual labour locally involving farm work and wood splitting. These activities remained his primary source of livelihood until the time of his arrest.
15. His marital history was marked by instability and strained relationships, largely attributed to alcohol abuse. He was married twice but both marriages failed. He was blessed with three (3) children, one (1) from each of the said marriages and one (1) born out of wedlock.
16. He admitted having killed the deceased with a machete and expressed remorse for the unfortunate incident.
17. His family sought for leniency citing his mental health issues and his change of behavior after his return from Nairobi.



18. The deceased's family was resentful and bitter about the loss of their kin. His wife exhibited sadness for the loss and strain of providing for the family. She pointed out that the deceased had left behind five (5) children who were still in school.
19. The Local Administration and the community strongly opposed the idea of leniency, highlighting both the community's fear and the offender's perceived threat to public safety.
20. The Probation Office observed that the Accused person was not fit for community rehabilitation.
21. 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.
22. 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.
23. 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.
24. 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.
25. It was clear from the facts of the case and the Pre-Sentence Report that the Accused person killed the deceased by cutting him on the head several times with a panga. This was intended to cause him harm. However, the circumstances under which he caused these injuries was of concern to this court.
26. A perusal of the Pre-Sentence Report showed that during the Social Inquiry, the Accused person told the Probation Officer that he killed the deceased because they had a boundary dispute with the deceased. The Probation Officer established that this was not true as the deceased and the Accused person did not share a boundary as they hailed from different villages. His second version that he killed the deceased because there was rivalry over a lady was also found to have been false. These were also versions that the local administration refuted.
27. It was evident from the Accused person's family and Local Administration that the Accused person started exhibiting erratic and intimidating behaviour when he returned back from Nairobi. The Local Administration reiterated that he would carry a panga or knife and a torch during the day and spend time near a river where he frightened women and children. In fact, earlier on the material date, he had attacked another person. The Local Administration described him as "rough and daring." The Accused person's mental condition which was said to have been exacerbated by drug and substance abuse seemed to have been blamed for the incident.
28. When he initially took plea, he admitted to the charge of murder and this court had to caution him and gave him time to speak to his counsel first before pleading to the Charge. When the matter came up again for plea on 6th December 2023, counsel for the State informed this court that the Accused person



- was not fit to take plea. This court referred him to Mathari Mental Hospital for treatment. He was next brought to court on 4th February 2025 when the Certificate of Capability to make a Defence was filed.
29. It did appear to this court that the Accused person had mental instability and his attack on the deceased was random and not planned. There was no motive for him to have attacked the deceased that would have demonstrated malice on his part. The deceased was at the right place at the wrong time. This was indeed very unfortunate.
30. While a life was lost, this court found difficulties in meting out a stiff sentence on a person who had mental instability. He was that person who wandered around in a village and had to be avoided not because he was violent by nature but rather due to illness that had been complicated by drug and substance abuse. His place was in not in jail but a mental hospital to treat a condition that affected his thought process and caused harm to others.
31. However, he could not go scot free as he had injured many other people which called for action to be taken to forestall him from injuring them by meting out a sentence that would enable him be rehabilitated. He would benefit from such restrain in custody for his own safety and that of the public and to also give him an opportunity to get the much needed treatment if he suffered mental instability at a later stage. Indeed, he had improved greatly from the first time when he appeared before court after receiving treatment for almost two (2) years as this matter was pending in court.
32. 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 (5) years imprisonment was suitable and adequate herein purely because of his mental state at the time he committed the offence. If he was sane at the material time, this court would have meted out on him a stiffer sentence.
33. 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).
34. 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).
35. 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.”
36. The requirement under Section 333(2) of the [Criminal Procedure Code](#) was restated by the Court of Appeal in *Ahamad Abolfathi Mohammed & Another vs Republic* [2018] eKLR.



37. The Accused person was arrested on 23rd October 2023. He was convicted on 25th April 2025. The period that he remained in custody while the trial was ongoing therefore ought to be taken into consideration while computing his sentence.

Disposition

38. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to five (5) years imprisonment to run from the date of this Sentence.

39. For the avoidance of doubt, the period between 23rd October 2023 and 9th June 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).

40. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 10TH DAY OF JUNE 2025

J. KAMAU

JUDGE

