



REPUBLIC OF KENYA



**Republic v Chiveli & another (Criminal Case 30 of 2017)
[2025] KEHC 8271 (KLR) (10 June 2025) (Sentence)**

Neutral citation: [2025] KEHC 8271 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 30 OF 2017**

**AC BETT, J
JUNE 10, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

CHEKATA LUKA CHIVELI 1ST ACCUSED

JACOB MUNYASIA WEKESA 2ND ACCUSED

SENTENCE

1. By a judgement dated 18th February 2025, this court convicted the two Accused persons, Chekata Luka Chiveli and Jacob Munyasia Wekesa for the offence of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. Thereafter, I directed that a pre-sentence report be filed sentence hearing.
2. The pre-sentence reports were filed on 24th March 2025 after which the Accused persons tendered their mitigation.
3. In mitigation, Ms. Rauto for the Accused persons submitted that the two Accused persons are remorseful. She said that from the circumstances; the Accused persons were responding to a cry for help from the mother of the deceased and did not intend to cause the death of the deceased. She submitted that their intention was demonstrated by their act of rushing the deceased to hospital immediately after the injury.
4. It was Ms. Rauto's further submissions that the Accused persons, who are relatives to the deceased have a good reputation in the community and are first offenders. She also stated that they are the sole breadwinners of their young families. She stated that the 2nd Accused lost his wife to breast cancer during the cause of the proceedings and is also sick and currently undergoing medication for a neck injury.



5. According to Ms Rauto, the victim's family and the community believe that the Accused can be reintegrated in the society and are therefore suitable for a non-custodial sentence.
6. Ms. Chala for the Republic submitted that although the Accused persons are first offenders they are trying to justify what they did and are not admitting the fact that they caused the death of a person. She argues that the court has to send a message that will act as a deterrence to the society that the right to life is sacrosanct and no one has the right to take the law into their hands. She submitted that only a custodial sentence can achieve that objective. She further submitted that under the principle of proportionality, the sentence meted on the Accused persons ought to reflect the seriousness of the offence.
7. In the pre-sentence report, the probation officer recommends that the 1st Accused be given a non-custodial sentence. The 1st Accused is stated to have admitted to be amongst the group of people who responded to a distress call from the deceased's mother when the deceased and his other brother attacked her. In their anger, the responders assaulted the two brothers leading to the unfortunate demise of the deceased.
8. The admission by the 1st Accused that he was amongst those that assaulted the deceased negates the prosecution's claim that the Accused is in denial of his actions.
9. From the pre-sentence report, the 1st Accused is said to be remorseful the offence. The entire family is said to be in favour of a non-custodial sentence. The victim's mother and brothers expressed their wish for leniency for the 1st Accused on the grounds that he is their step-son and step-brother respectively. The stepmother feels that the punitive measures against the 1st Accused would not bring peace to the family. It was said that the victim's wife abandoned their son, now aged 8 years and left the matrimonial home after the demise of her husband.
10. In regard to the 2nd Accused, the pre-sentence report is that his wife died because of breast cancer in the year 2022 leaving behind their four (4) children who are all currently in school.
11. The pre-sentence report indicated that although the victim's mother and brothers suffered the loss of their loved one, the mother hopes that the court would consider a non-custodial sentence as it would enhance family peace and her safety since 2nd Accused is a son to her brother-in-law. The probation officer concluded that the 2nd Accused who has a high standing reputation in the community is suitable for a non-custodial sentence and recommends that a probation sentence for him as well as the 1st Accused.
12. The objectives of sentencing in our legal regime are well established. It aims to punish the offenders justly in order to achieve retribution, deter future criminal acts, facilitate rehabilitation, and render restorative justice by addressing the needs of the victim and the community. Additionally, sentencing aims at protecting the public by confining the offender and denouncing the criminal conduct.
13. The *Sentencing Policy Guidelines* 2023 stipulate that sentencing should also promote healing in relationships between the offenders, victims and the community as well as integration of the offender into the society. Under section 205 of the *Penal Code*, a person who is convicted for manslaughter is liable to imprisonment for life. This means that the court has a discretion in considering the most appropriate punishment and can impose a shorter sentence based on the mitigating circumstances, save where a minimum sentence is prescribed. In meting out a sentence for the offence of manslaughter the court has to consider various factors including: -
 - a. The circumstances of the offence.



- b. The age of the accused
 - c. Any mitigating factors such as the offender's attitude towards the offence whether the accused is a first offender and the accused's responsibility towards others and the character and conduct of the offenders.
 - d. The criminal history of the offender.
 - e. The protection of the community.
 - f. The use of a dangerous weapon.
14. I have thoughtfully considered the aggravating and mitigating circumstances of the offence. The 1st and 2nd Accused appear to have committed the offence jointly with other responders who reacted to the victim's mother cry of distress. The victim was notorious for constantly attacking his elderly mother and no doubt this irked his family members and neighbours who decided to inflict some punishment on him. There is no evidence that lethal weapons were used in assaulting the deceased. In fact, the pathologist attributed the deceased's death to shock as a result of pain from the beating. It also emerged from the hearing that the Accused persons would often assist restrain the PW4, from assaulting the mother. Taking into account the entire circumstances of the case, as well as the fact that the deceased was related to the Accused persons and was a victim of a discipline process gone awry, I find that the degree of culpability of the two Accused persons is quite low.
15. From the interviews conducted by the probation officer it is apparent that the victims of the offence are more inclined towards reconciliation and re-integration as a means of enhancing family unity. The community is also amenable to a reconciliatory sentence.
16. There is no doubt that a precious life was lost as a result of the Accused persons decision to take the law into their hands despite having the option of apprehending the deceased and his brother and handing him over to the police. As a result of the offence, the victim's immediate family was disintegrated and his young child left in the hands of the grandparents. His mother and siblings also lost their loved one. The Accused persons committed an offence that calls for reprobation.
17. I have further taken into account both of the Accused persons personal circumstances and the mitigating factors tendered in their behalf. I note that both the Accused persons are middle aged, remorseful and said to be of good conduct in the community as well as sole breadwinners in the families. The 2nd Accused is also said to have suffered a neck injury during the arrest which has never healed.
18. I am alive to the principles underpinning the sentencing process and in view of the mitigating factors and the deceased's family's desire as well as the community's expressed preference for a non-custodial sentence, I am of the opinion that a probation sentence with strict conditions will serve the objective of punishment and deterrence while ensuring that the ends of justice are met.
19. Ultimately, the 1st and 2nd Accused are each sentenced to a non-custodial probation sentence as follows:
- a. Each of the Accused persons shall serve three (3) years' probation with immediate effect.
 - b. The Accused persons shall within two years each pay to the deceased's mother a sum of Kshs. 100,000 to be applied towards the upkeep and education of the deceased's son.
 - c. The probation officer shall be at liberty to make an application to this court in the event of failure by any of the Accused persons to comply with order (b) above.



DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 10TH DAY OF JUNE 2025.

A. C. BETT

JUDGE

In the presence of:-

Ms. Chala for the Prosecution

Mr. Adeka holding brief for Ms. Rauto for the Accused

Court Assistant: Polycap

