



**Republic v Wario alias Mzungu (Criminal Case E017 of 2023)
[2025] KEHC 8173 (KLR) (10 June 2025) (Sentence)**

Neutral citation: [2025] KEHC 8173 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
CRIMINAL CASE E017 OF 2023**

**JN NJAGI, J
JUNE 10, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ALI MUNUMBI WARIO ALIAS MZUNGU ACCUSED

SENTENCE

1. The Accused herein was facing a charge of murder contrary to section 203 as read with section 204 of the *Penal Code*. He however entered into a successful plea bargain agreement with the prosecution and the charge was reduced to manslaughter contrary to section 202 as read with section 205 of the *penal code*. The particulars of the offence of manslaughter were that on the 4th September 2023 at about 2030 hours within Kilelengwani village in Tana Delta Sub County in Tana River County he unlawfully caused the death of Abdalla Hassan (herein referred to as the deceased).
2. The accused pleaded guilty to the charge. The matter is now coming up for the court to determine the most appropriate sentence on the accused.
3. The facts of the case that the appellant pleaded guilty to were that on the evening of the material day, the deceased and his wife were inside their house at their rice farm at Tazama Lako village. The deceased stepped out of the house to light a cigarette. His wife then heard some foot steps outside the house and informed him of the same. The deceased took some steps outside the door to check. He came face to face with the accused. The deceased's wife came out of the house and found the two of them wrestling. The accused was holding a panga. He overpowered the deceased and dropped him to the ground. The accused cut the deceased with the panga. The deceased's wife pulled the deceased from the accused. She saw the accused using her husband's torch. She got hold of him and started to scream for help. She released him when she saw her husband struggling. The accused stood there on being released. A nyumba kumi elder called Shebe went to the place. The accused escaped from the scene. Another elder went there. Shebe called Kilelengwani police post who informed the OCS, Kipini police station.



Police officers from Kipini were sent to attend to the scene. They found the deceased having died. They escorted the body to Mpeketoni Hospital mortuary where a post mortem was conducted by a doctor. The doctor found the body with multiple cut wounds on the skull and chest and formed the opinion that the cause of death was due to severe haemorrhage shock due to multiple severe deep cut wounds, femoral artery injury and fracture of the humerus. The accused was later arrested and charged.

4. In the plea agreement the prosecution proposed a sentence of 7 years imprisonment while counsel for the accused proposed a sentence of 4 years. The plea agreement indicated that the accused had initially approached the deceased's wife and requested her for a romantic relationship but she declined and went ahead and married the deceased. That after the two got married the accused attacked the deceased and assaulted him but the matter was settled amicably. The deceased and his wife had been married for one year and 7 months when the accused killed him.
5. Counsel for the accused, Mr. Komora, mitigated on behalf of the accused that the accused admitted the charge of manslaughter and thereby did not waste the court's time by going through a trial. That he is an albino and a father of 2 children. That his condition compels him to use a skin ointment which is not readily available in prison. Counsel pleaded for a sentence of 4 years as proposed in the plea bargain agreement.
6. A pre-sentence report was prepared by the Garsen Probation Officer, Mr. Dennis Mwaniki. The report noted that the accused is aged 40 years and is living with albinism. That he has a family of 2 children.
7. The accused admitted to the probation officer to have committed the offence and told him that on the fateful night, he felt emotionally compelled to confront the deceased for taking his "wife" from him. That at the heat of the moment he swung his machete without considering the potential consequences. He fled the scene and was arrested several days later.
8. The report observes that the accused has an aggressive behaviour, is not remorseful for the offence committed and has not apologized to the family of the deceased. That his personal life is marked with infidelity and dishonesty which has ruined his reputation in the community. The report urged the court to consider the sentence proposed by the prosecution in determining the appropriate sentence to the accused.
9. It is now my solemn duty to pass an appropriate sentence on the convict. I have in the first place to observe that sentencing lies at the discretion of the trial court but the same has to be exercised judiciously. The court is required to look into all the circumstances of the case before arriving at any particular sentence. In this regard, the Court of Appeal in *Charo Ngumbao Gugudu v Republic* (2011) eKLR held as follows: -

"Further, the law is that sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that it is thus not proper exercise of discretion in sentencing, for the Court to fail to look at the facts and circumstances of the case in their entirety before settling for any given sentence – see *Ambani v. R* [1990] KLR 161".

10. The [*Judiciary Sentencing Policy Guidelines*](#) lists the objectives of sentencing at page 15 paragraph 4.1 as follows:
 - i. Retribution: To punish the offender for his/her criminal conduct in a just manner.
 - ii. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.



- iii. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
 - iv. Restorative Justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims, communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
 - v. Community protection: To protect the community by incapacitating the offender.
 - vi. Denunciation: To communicate the community's condemnation of the criminal conduct.
11. The Court of Appeal in *Thomas Mwambu Wenyi v Republic* (2017) eKLR discussed the principles of sentencing and cited the Supreme Court of India in *Alister Anthony Pereira v State of Maharashtra* at paragraph 70-71 where the court held the following on sentencing:
- Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principles of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.
12. I have considered the principles of sentencing outlined above. I have further considered the mitigation by the convict herein and noted the recommendation as contained in the pre-sentencing report. It is clear from the facts of this case that the accused attacked and killed the deceased due to his affection for the wife to the deceased and after the wife declined his advances and married the deceased. It is clear that the accused went to the deceased's home while armed with a panga with one aim, to eliminate the deceased. He occasioned him serious cuts that led to his immediate death. The accused is lucky to have escaped with a charge of manslaughter. He will just serve his sentence and after a short while he will be out of prison to may be pursue the woman he killed for. But the deceased he killed for the said woman will not come back to life.
13. I have considered the sentences proposed by the prosecution and counsel for the accused. I have considered other cases where jail terms were imposed in manslaughter cases. In *Republic v Anne Wambui Ochieng* (2021) eKLR the accused stabbed the deceased with a kitchen knife killing him. The court sentenced her to 7 years imprisonment. In *Republic v Manyala* (Criminal Case E004 of 2024) [2024] KEHC 4232 (KLR) (26 April 2024) (Ruling) where the accused killed the deceased after cutting him on the head on suspicion that he had stolen his house hold goods, the court sentenced him to 15 years imprisonment.
14. In the circumstances of this case, I find the sentence of 7 years proposed by the prosecution to be more appropriate. A sentence of 4 years imprisonment as proposed by the defence will not serve justice for the deceased in this case.



15. I have further considered that the accused has been in custody since his arraignment on the 9th October 2023. He has been in custody awaiting trial for a period of one year and 8 months. Section 333(2) of the *Criminal Procedure Code* requires a court when sentencing an accused person who has been in custody to take into account the period spent in custody awaiting trial.
16. In view of the foregoing, I sentence the accused to serve 7 years imprisonment. The same to commence from the date of plea, i.e, 9th October 2023.

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

J. N. NJAGI

JUDGE

In the presence of:-

Mr. Komora for accused

Miss Mkongo for Prosecution

Accused: present at GK Prison Malindi

Court Assistant: Ndongye

