



**Republic v Avugwi & another (Criminal Case E009 of 2022)
[2025] KEHC 7983 (KLR) (5 June 2025) (Sentence)**

Neutral citation: [2025] KEHC 7983 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE E009 OF 2022**

JN KAMAU, J

JUNE 5, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

HESBON AVUGWI 1ST ACCUSED

DANIEL KIVISHA 2ND ACCUSED

SENTENCE

1. On 19th November 2024, this court convicted the Accused persons herein for the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code Cap 63 (Laws of Kenya) having been reduced from the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code Cap 63 (Laws of Kenya) under Section 215 of the Criminal Procedure Code Cap 75 (Laws of Kenya).
2. In their mitigation, the Accused persons said that they were both first time offenders and bread winners of their families. The 1st Accused person said that he had school going children while the 2nd Accused person averred that he was the only surviving son of his father who was deceased. They stated that they were remorseful and sought leniency of the court. They said that if the court was to mete out to them a custodial sentence, then it should take into account the period they spent in custody as their trial was ongoing.
3. On its part, the Prosecution stated that a life was lost as a result of the actions of the two (2) Accused persons. It stated that the Pre-Sentence Reports showed that the Accused persons were not remorseful. It averred that the 1st Accused person had blamed the 2nd Accused person for the incident. It pointed out that the 2nd Accused person had contended that the deceased was a petty offender and ought to have been dealt with.



4. It stated that the deceased's family had not recovered following the deceased's death and that the bitterness between the deceased's family and the Accused persons still existed. They urged this court to mete out custodial sentences to deter would be offenders and to also serve as a punishment to the Accused persons.
 1. According to the Pre-sentence Report of Mariam Korir, Probation Officer, Vihiga County dated 5th February 2025 and filed on 6th February 2025, the 1st Accused person was thirty-six (36) years old. He completed his primary education at Ikobero Primary School but did not proceed to secondary education due to lack of school fees. He stayed with his mother in Nakuru in the hope of being enrolled to secondary education but that did not happen.
 2. He later moved to Nairobi where he worked in Jua Kali industry and acquired architectural painting skills through apprenticeship. He worked in construction until 2018 when he returned home and engaged in painting and subsistence farming. He admitted having consumed alcohol and narcotic drugs. He was of good health. The social inquiry indicated that he was a first offender.
 3. He denied having committed the offence and blamed his Co-Accused person for the offence. He was not remorseful but sought a lenient sentence claiming that he was the sole breadwinner of his family who would suffer if he was incarcerated.
 4. His family vouched for him. They urged this court to be lenient to him and impose on him a non-custodial sentence noting that he was a widower with children who depended on him. They were still in denial of the offence even after his conviction.
 5. In his Pre-sentence Report of dated 10th February 2025 and filed on 12th February 2025, J. Sahani, Probation Officer, Vihiga County stated that the 2nd Accused person was twenty-eight (28) years old. He attended Kamungungwa Primary School but dropped out in Class Seven (7) due to stigma and mockery from classmates about his family background. He lacked paternal care as he was raised by his grandfather. His lack of adequate support systems may have contributed to vulnerabilities and substance abuse.
 6. He engaged in casual jobs and was later employed as a cook in a hotel in Kapsabet. He also worked in the unskilled building and construction industry, in the boda-boda sector and also in a furniture workshop.
 7. He was married with two (2) children and was of good health. He consumed alcohol and bhang which he claimed gave him energy to sustain his casual work. He was not a first offender as he had been previously convicted of a traffic offence in Kapsabet and fined Kshs 15,000/=.
 8. He denied having committed the offence even after conviction. He, however, sought for leniency arguing that he had no intention of killing the deceased but was only punishing him for him to return the alleged stolen duck.
 9. The deceased's family was resentful towards the Accused persons' action that took away their kin. They explained that although the deceased was a drunkard, his death was a loss to the family as he assisted in farming, herding cows and decision-making. They opposed the Accused persons being accorded a lenient sentence. They prayed that the court punish them.
 10. The Local Administration and the community noted that the Accused persons abused drugs which could have been the aggravating factor of the offence. They were opposed to them being



accorded community rehabilitation citing their security, customs and tradition that dictated that the offenders not mingle with them, nature of the offence and victim impact statement.

11. The Probation Officers opined that the Accused persons were not fit for community rehabilitation.
12. 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.
13. It was important that the sentence communicate to the community, condemnation of their 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.
14. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of the offence at the time of sentencing them, chances of the Accused persons being reintegrated in the society would be next to impossible as there were possibilities of being harmed.
15. After serving a sentence, the offenders could rejoin society as reformed persons capable of reintegration into the society. They would have learnt their lesson and others would have learnt through them.
16. Killing someone was an abomination in the society. That could explain why the victim's family and the Local Administration did not want them released on a non-custodial sentence. Justice not only needed to be done but it had to be seen to be done.
17. This court looked at the Post-mortem Report dated 1st September 2022 and noted that the deceased died as a result of lung collapse secondary to frail chest due to trauma most likely from a blunt object.
18. Although the Accused persons pleaded for leniency, this court did not find it prudent to grant them a non-custodial sentence due to the nature of the offence. The nature of the injuries the deceased sustained showed the malice that the Accused persons had and showed their intention of killing him. It did not matter that the deceased was a petty thief. He did not deserve to die in the manner that he did at the hands of the Accused persons as they should have taken him to the police station so that he could be processed through legal channels for his misdemeanours. Theft of a duck was not worth the trouble that had now faced them.
19. Having considered the facts of this case and the Accused persons' mitigation, this court came to the firm conclusion that a non-custodial sentence would be unjust as a life was lost. Indeed, the Probation Office had found that them unsuitable for a non-custodial sentence.
20. As a life was lost needlessly and the Accused persons proceeded with the full trial, it was the considered opinion of this court that a sentence of twelve (12) years imprisonment would be suitable and adequate herein.
21. Going further, this court was mandated to consider the period they had spent in remand while their trial was ongoing in line with Section 333(2) of the [Criminal Procedure Code](#) Cap 75 (Laws of Kenya).



22. 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).
27. 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.”
28. 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.
29. The Accused persons were arrested on 26th August 2022. Although they were granted bond, they did not seem to have posted the same. The period they remained in custody while the trial was ongoing therefore ought to be taken into consideration while computing their sentence.

Disposition.

30. Accordingly, having convicted the 1st and the 2nd Accused persons of the offence of manslaughter contrary to Section 202 as read with 205 of the [Penal Code](#), they are hereby each sentenced to twelve (12) years imprisonment which will run from today.
31. For the avoidance of doubt, the period that each Accused person spent in custody between 26th August 2022 until 4th June 2025 be and is hereby taken into account while computing their sentences in line with Section 333(2) of the [Criminal Procedure Code](#) Cap 75 (Laws of Kenya).
32. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 5TH DAY OF JUNE 2025

J. KAMAU

JUDGE

