



**Republic v Amutana alias Wycky (Criminal Case E012 of 2024)
[2025] KEHC 7950 (KLR) (5 June 2025) (Sentence)**

Neutral citation: [2025] KEHC 7950 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE E012 OF 2024**

JN KAMAU, J

JUNE 5, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

WYCLIFFE INZAULI AMUTANA ALIAS WYCKY 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 30th 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 18th June 2024, at around 1930 hours, Erick Kidali Mugunga (hereinafter referred to as the “deceased”) was on his way home when he met the Accused person herein. At the time, the Accused person was armed with an axe. The Accused person stopped and confronted him about a love affair between him (the deceased) and his wife. Suddenly, he attacked the deceased and cut him several times on the head and neck using the axe. The deceased fell down and the Accused person ran away.
3. The Accused person arrived at his home and hid the axe and informed his brother, one Moses Amimo, that he had fought with the deceased. The said Moses Amimo then went to the home of Festo Kidali, the deceased’s brother, and informed him of what the Accused person had told him. They proceeded to the deceased’s home and while there, one Douglas Imbaya called the Festo Kidali by using deceased’s mobile phone and informed him of the deceased’s whereabouts.
4. They proceeded to the scene where they found members of the public and the deceased lying on the ground bleeding from the head. The deceased was rushed to Vihiga County Referral Hospital where he was pronounced dead.



5. The said Festo Kidali reported the matter at Mbale Police Station and was referred to Gambogi Police Station while the said Moses Amimo rushed back home to arrest the Accused person. However, he did not find him. On the same day, investigations commenced. Police Officers visited the scene and later recovered the murder weapon, a blood-stained axe hidden under a stone within the compound of the Accused person's house.
6. A postmortem examination on the body of the deceased was carried out on 27th June 2024. The Pathologist formed the opinion that the cause of the deceased's death was severe head injury secondary to blunt force trauma following assault. The Postmortem Report dated 27th June 2024 was produced as Exhibit 1.
7. The Accused person was arrested at Mogotio, Baringo County where he had fled to on 29th June 2024. After investigations were completed, he was charged with the offence of murder.
8. Having entered into a Plea Agreement, the Accused person proposed that he serves a sentence of ten (10) years while the Prosecution recommended a sentence of fifteen (15) years imprisonment.
9. In his mitigation, the Accused person said that he was a first offender. He contended that he was a young man of middle age, thirty-eight (38) years. He stated that this showed his importance in the community as he was still energetic. He averred that he was the sole breadwinner of his family.
10. He said that he was remorseful and regretted having committed the offence. He stated that the offence arose of provocation by the actions of the deceased who had a love affair with his wife as a result of which anger overwhelmed him and he committed the offence herein. He pointed out that he had a history of using drugs as was shown in the Pre-Sentence Report which largely contributed to him having committed the offence.
11. He prayed for forgiveness from the court and from the deceased's family. He said that the period he had stayed in prison had taught him a lesson and he had undertaken never to commit such an offence again.
12. He pointed out that the Pre-Sentence Report had shown that the community recognised that he had no previous criminal records and that he was a peaceful person and that it is only the action by his wife which caused him to commit the offence.
13. He pleaded with the court that even though his family and that of the deceased had recommended a custodial sentence, he had learnt a lot and changed. He urged the court to be lenient on him if it found a custodial sentence to be fit in view of the circumstances that led to the offence.
14. On its part, the Prosecution urged this court to mete out a custodial sentence to the Accused person because as per the Pre-Sentence Report, the home environment was still hostile. It stated that it was for his own safety that he remained in custody. It pointed out that it had proposed a custodial sentence of system (15) years, which it opined was adequate. It, however, recognised that sentencing was a discretion of the court.
15. According to the Pre-Sentence Report of Mariam Korir, Probation Officer, Vihiga County that was dated and filed on 3rd June 2025, the Accused person was thirty-eight (38) years old. He attended Mwembe Primary School but dropped out in Class Four (4) for not being able to comprehend what was taught. Thereafter, he engaged in small-scale business of fast-moving items (malimali) in the community. He also engaged in selling of murrum used in construction. He was married with two (2) children but his wife left after the incident leaving the children in the custody of his mother. He was a Christian.



16. He admitted having committed the offence and sought for forgiveness. He said that he was a first offender and was remorseful. He pleaded with court to grant him a lenient sentence.
17. The family of the deceased was still in pain following the loss of their kin. They lamented that they were now expected to take care of the deceased's children. They expressed their resentment towards the Accused person and urged the court to punish him for the offence. They proposed that the court metes out to him a custodial sentence to serve justice for their kin.
18. His family vouched for him as a good man and blamed the offence to the infidelity by the offender's wife.
19. The Local Administration and the community reported that Accused person was an aggressive person especially after intoxication with bhang. They were opposed to him being considered for community rehabilitation noting that he would not be safe if released.
20. The Probation Office observed that the Accused person was not fit to be considered for community rehabilitation. It urged the court to dispense this matter as deem fit.
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 he killed the deceased by cutting him on the head and neck several times with an axe. This was not to restrain him from having a love affair with his wife but was intended to cause him harm and subsequent death. He abused drugs which may have contributed to him having committed the offence. The extreme anger was not worth the trouble as he not only lost his wife who left him but he lost his liberty after incarceration leaving his children with his mother.
26. 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 twelve (12) years imprisonment was suitable and adequate herein purely because the Accused person entered into a Plea Bargain Agreement. If the matter had proceeded as a murder case, this court would have meted out on him a stiffer sentence.



27. 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).
28. 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).
29. 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.”
30. 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.
31. The Accused person was arrested on 29th June 2024. He was first arraigned in court on 3rd July 2024. His application for bond was declined. He remained in custody during his trial. He was convicted on 30th April 2025. This was a period that therefore ought to be taken into consideration while computing his sentence.

Disposition

32. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to twelve (12) years imprisonment to run from the date of this Sentence.
33. For the avoidance of doubt, the period between when he was arrested on 29th June 2024 and 4th June 2025 before he was sentenced 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).
34. It is so ordered.

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

J. KAMAU

JUDGE

