



**Republic v Kaunda (Criminal Case E023 of 2022)
[2025] KEHC 10187 (KLR) (15 July 2025) (Sentence)**

Neutral citation: [2025] KEHC 10187 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL CASE E023 OF 2022
GL NZIOKA, J
JULY 15, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JUSTUS ABEL KAUNDA ACCUSED

SENTENCE

1. The accused was arraigned before court charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code (Cap 63) Laws of Kenya. The particulars thereof are as per the charge sheet.
2. He pleaded not guilty to the charge. The matter was set down for hearing but subsequently, the parties entered into negotiation on plea bargain. By a plea bargain agreement filed in court on 27th March 2025, the charge was reduced from murder to manslaughter contrary to section 202 as read together with section 205 of the Penal Code. The particulars of the charge are as per the charge sheet.
3. The charge was read to the accused and he pleaded guilty thereto. The particulars thereof were also read out and he confirmed the same to be correct in total. He was then convicted on his own plea of guilty. The prosecution has availed records indicating that, the accused is a first offender.
4. In mitigation submissions filed by the accused, he states that, he had no intention of killing the deceased as the offence was committed when he had no stable mental capacity. That, he has a history of mental condition and prior to the offence he had been treated at a psychiatric clinic. Further, the offence was committed when he was only twenty-five (25) years old. Furthermore, based on the provisions of Sentencing Policy, he be accorded a non-custodial sentence.
5. Be that as it were, the court ordered for and received a pre-sentence report dated 19th May 2025. Notably, the report indicates that the accused’s father is a police officer and that, family issues are solved within save for accused’s actions that are escalated due to his violence nature. That the accused indulged



in taking bhang right from form two. That, he was transferred to a day school, sat for form four exams, scored poor grades, and then openly got into drugs.

6. That he has been a nuisance at home, destroying property, then arrested and released without charges so as to resolve the matter at home. Further, he has even trespassed into the Kenya Defence Force premises and claimed to be one of them. Further his family is non-committal on his release on non-custodial sentence on the ground that, they cannot vouch for his safety. Furthermore, he is a danger to the family and community due to his mental state, and due to his behavior the mother is diabetic and father hypertensive.
7. The report further indicates that, the accused was charged with the offence of defilement while in class seven and placed on three (3) years' probation in the year 2014 and satisfactorily completed the sentence. That, he is a dangerous person as even monitoring him to follow the doctor's prescription is difficult. On the occurrence of the offence, the report indicates that, the accused regrets killing the deceased whom he viewed as a friend and contemplates committing suicide on realizing what he did, and seeks for forgiveness. However, he admits he still has access to bhang.
8. On the victim impact, the report reveals that, the deceased was thirty-six (36) years old, a single mother of two children aged 19 and 14 years. That her death has psychologically affected the children and her mother who are yet to come to terms with her demise and are undergoing counselling. Further the cruel manner in which the deceased died hurts the family a lot.
9. Furthermore, the deceased's siblings are opposed to the charge of manslaughter and question how the accused was able to work and earn a living if he was mentally sick. That they consider the offence as having been premeditated as he was armed while attacking the deceased and then disappeared. Further, by his family members not seeking for forgiveness or mourning with them, it is clear that they understood, the accused was mentally fit at the time of the offence.
10. That, the Area Chief described the accused as a habitual offender with negative community report. That his behaviors affects both his family and community at large and he is a bad influence to other young people in the neighbourhood. That, the community is still bitter with him for the offence he committed and harbor revenge. That he is a danger to the society if released on a non-custodial sentence. That he almost committed a similar offence to a young man who was rescued by the community.
11. In conclusion, the Probation Officer states that the accused has a serious bhang reliance problem that affect his mental wellness. That he lacks family support to address the same as he is unwilling to change his behavior and therefore considered to be a danger and threat to the community, if released.
12. Pursuant to the aforesaid and in particular the detailed pre-sentence report, it is clear that, the accused cannot be released on a non-custodial sentence. That said, the other issue raised is the mental status of the accused. I find that, as much as he may have been treated in a psychiatric clinic, his problem is not purely mental instability but influence of drugs. That in itself, does not render him mentally incapable of understanding the consequences of his action. The report depicts a person who purely chose a path in life as early as he was in class 7 when he started indulging in drugs and criminality. Even then, at the age of twenty-eight (28) years, he has decided not to shade of use of drugs. It is even reported that, he is still accessing drugs despite being in prison remand. Is that a mad person?
13. Further, how can he with mental challenges been able to work, earn a living and as rightfully stated by the victim's family, demand dues for work done.



14. It is the considered opinion of this court that, the accused is using “bhang” as a shield to commit offence. He has no serious mental health problem that can accord him the defence insanity. On that note, a plea bargain agreement on that ground was not be well founded. But I leave it at that.
15. Pursuant to the aforesaid and taking into account the objective of sentence which includes deterrence and need to safeguard the community and suspect, I find that the accused ought to be kept away from the society for quite some time to reflect on his own life. Taking into account the aforesaid and the period he has been on trial, I sentence the accused to serve fifteen (15) years imprisonment. The sentence runs from the date he was placed in custody in this matter.
16. It is so ordered

DATED, DELIVERED, AND SIGNED THIS 15TH DAY OF JULY 2025

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms Chepkonga for the State

Mr. Owour for the accused

The accused present virtually

Ms Hannah court assistant

