



**Republic v Ngugi (Criminal Case E004 of 2020)  
[2025] KEHC 11049 (KLR) (8 July 2025) (Sentence)**

Neutral citation: [2025] KEHC 11049 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL CASE E004 OF 2020  
RN NYAKUNDI, J**

**JULY 8, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**EDGAR NJOKA NGUGI ..... ACCUSED**

**SENTENCE**

1. Edgar Njoka Ngugi faced a charge of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 21<sup>st</sup> day of December, 2019 at Soy Sub-county within Uasin Gishu County, the accused person murdered Daniel Kimutai. The charge was however reduced to manslaughter as per the plea agreement dated 9<sup>th</sup> January, 2024. The court entered a plea of guilty on the charge of manslaughter after certifying that the Plea Bargain Agreement conformed with the provisions of Section 137A-O of the Criminal Procedure Code. Similarly, this court was content with the factual matrix of the case and the accused's competence to enter into the Plea bargain agreement.
2. The accused person was under the leadership of learned counsel Ms. Clare Karuga and subsequently shepherded by Mr. Kamau whereas the prosecution was led by Ms. Okok.
3. I have noted the pre-sentence report on record, which has captured the family background of the deceased, personal history, circumstances of the offence, attitude towards the offence, views of the victim and community's attitude towards the offender and the offence. According to the report, the offender has demonstrated genuine remorse and takes full responsibility for his actions. He acknowledged that it is his violent act that led to the tragic loss of life, causing immense pain to a vulnerable family. He deeply regrets the consequences of his actions, recognizing not only the suffering of the deceased's young family but also the significant emotional and financial toll it has taken on his own life. He stated that while he understands that no form of reparation can bring back the lost life,



remains hopeful for leniency, believing that he has learned from his mistakes and is willing to make amends where possible.

4. As for the views from the victims, the deceased's family expressed the emotional and financial impact of the deceased death, particularly on his spouse, who now bears the responsibility of raising their two children to support the schooling of the deceased's children. The deceased family affirmed according to the report that they are aware of the plea bargain process and they are receptive to a lenient sentence for the offender, recognizing his remorse. They also acknowledged the reconciliation efforts that were made by the offender's family, which included seeking forgiveness and compensation in the form of nine cows, which aligned with the Kalenjin culture, a gesture they accepted and interpreted as a sign of accountability and the concern from the offender and his family.
5. The report recommended that the accused may be considered for a non-custodial sentence to enable him to continue providing for his child while also allowing for structured rehabilitation. The probation officer stated that their office will initiate interventions aimed at supporting the offender's reintegration and fostering reconciliation between the families of the deceased and the offender. The officer recommended that the accused be placed on probation for a period of 3 years.
6. The accused person swore an affidavit in mitigating and made the following averments captured verbatim:
  - a. That I am the Accused in this matter, initially charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#), chapter 63 of the Laws of Kenya, and I am fully conversant with the proceedings and competent to swear this affidavit.
  - b. That following constructive engagement with the Prosecution, I entered into a plea agreement and pleaded guilty to the lesser charge of Manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#).
  - c. That this decision reflects my acceptance of responsibility and my commitment to facilitating the expeditious administration of justice.
  - d. That I express my deepest and most sincere remorse for the tragic incident that led to the untimely death of the Deceased.
  - e. That I profoundly regret my actions and their irreversible impact on the Deceased's family, the community, and society at large.
  - f. That I humbly seek forgiveness and pledge to make amends through meaningful actions.
  - g. That the incident arose from a spontaneous altercation between myself and the Deceased, devoid of premeditation, malice aforethought, or intent to cause death.
  - h. That the agreed facts demonstrate the absence of aggravating factors.
  - i. That I am a first offender with no prior criminal record. This incident represents an isolated deviation from an otherwise law-abiding life.
  - j. That I have undertaken genuine and concerted efforts to reconcile with the Deceased's family, guided by the principles of restorative justice.
  - k. That I am deeply humbled that the Deceased's mother testified before this Honourable Court, affirming her forgiveness. Furthermore, I have provided compensation to the Deceased's family as a gesture of goodwill and commitment to healing, consistent with customary practices and the restorative justice framework.



- l. That I am a 41-year-old family man with dependents, who rely on me for financial, emotional, and physical support.
- m. That a custodial sentence is likely to unduly prejudice my dependents, particularly being vulnerable persons who depend on me. A custodial sentence would cause disproportionate hardship to my dependents, undermining the principle of proportionality in sentencing.
- n. That I suffer from diabetes, a chronic medical condition documented in a medical report filed with this Honourable Court. This condition can impair mood regulation and judgement, potentially contributing to my actions during the incident. My condition requires consistent medical management, which is better facilitated in a community setting than in custodial facilities where access to healthcare may be limited.
- o. That I was intoxicated during the incident, which further impaired my judgement and contributed to my actions. While I take full responsibility, I pray that this Honourable Court accepts this temporary state of diminished capacity as a mitigating factor, as it there was no premeditation.
- p. That a Probation Officer's Report, filed with this Honourable Court, recommends a non-custodial sentence following a comprehensive assessment of my character, circumstances, and suitability for community-based rehabilitation.
- q. I humbly pray that the court finds that the professional assessment of the Probation Officer, tasked with evaluating rehabilitation prospects, merits significant weight in this Honourable Court's determination.
- r. That by pleading guilty while on bond and without any pressures of remand prison, I have demonstrated respect for the judicial system, saved valuable court resources, and expedited the administration of justice.
- s. That I pray that the court does recognise this early guilty plea as a significant mitigating factor, warranting leniency as it reflects remorse and accountability.
- t. That I am fully committed to rehabilitation and prepared to comply with any conditions imposed by this Honourable Court, including community service, and probation supervision. I am willing to engage in structured rehabilitative measures.
- u. That I pray that the Court finds that a non-custodial sentence is appropriate in my case, based on the following reasons:
  - i. My remorse, first offender status, reconciliation efforts, and commitment to rehabilitation demonstrate my suitability for a community-based sentence that fosters reform rather than punitive incarceration.
  - ii. Given the absence of aggravating factors, my medical condition, intoxication, and family responsibilities, a custodial sentence would be unduly harsh and disruptive to my dependents.
  - iii. That I further wish to state that although my former wife left the matrimonial home, I have continued to support her and our two (2) children, who remain under my care and responsibility. Furthermore, I am presently married to one Emma Atieno Oketch, who is now two (2) months pregnant, and accordingly, both she and our unborn child are also my dependents.



- iv. My reconciliation with the Deceased's family and compensation efforts.
  - v. The Probation Officer's recommendation supports the application of such measures, which would allow me to fulfil my family obligations while undergoing rehabilitation.
  - v. That I respectfully propose a non-custodial sentence, such as a three-year probation order under the [Community Service Orders Act](#), accompanied by conditions including regular supervision by a probation officer to monitor compliance and progress, community service to demonstrate my commitment to making amends and contributing to society, and periodic court reviews to ensure adherence to all conditions. These measures would achieve the sentencing objectives of rehabilitation, deterrence, and public protection while allowing me to maintain family stability and continue restorative efforts.
  - w. THAT a custodial sentence would undermine the sentencing objectives by disrupting my family unit, leaving my dependants without support and potentially causing long-term socio-economic harm, exacerbating my medical condition due to limited healthcare access in custodial settings, hindering effective management of my diabetes, and limiting opportunities for meaningful rehabilitation. In contrast, a non-custodial sentence would facilitate structured rehabilitation, preserve family unity, and promote community reintegration.
  - x. That I humbly pray for this Honourable Court's mercy and compassion. Considering the totality of mitigating factors my guilty plea, first offender status, profound remorse, reconciliation efforts, compensation to the Deceased's family, medical condition, intoxication, family responsibilities, and the Probation Officer's recommendation—I respectfully request a non-custodial sentence, such as probation or community service. This would enable me to support my dependants, manage my health, contribute to society, and fully rehabilitate, in line with the Sentencing Policy Guidelines' focus on rehabilitation, restorative justice, and proportionality.
7. Learned Counsel Mr. Kamau on his part submitted in consonance with the mitigation factors highlighting the Pre-sentence report and prayed that the accused person be considered for a non-custodial sentence.
  8. In his comprehensive submissions, learned counsel Mr. Lagat advanced compelling arguments for the imposition of a non-custodial sentence, specifically requesting a three-year probation order for the accused Edgar Njoka Ngugi, who had pleaded guilty to manslaughter contrary to Sections 202 and 205 of the [Penal Code](#). Mr. Lagat submitted that the unique circumstances of this case, coupled with established jurisprudential principles and the guidance provided by the Sentencing [Policy Guidelines of 2023](#), strongly favored a restorative justice approach over incarceration.
  9. Counsel laid the foundation of his argument by submitting that the Sentencing [Policy Guidelines of 2023](#) provide a principled framework designed to ensure fairness, consistency, and proportionality in the administration of criminal justice. Mr. Lagat particularly emphasized that the Guidelines identify retribution, deterrence, rehabilitation, restorative justice, community protection, reconciliation, and reintegration as core objectives of sentencing, arguing that the accused's early guilty plea, demonstrated remorse, and active reconciliation efforts aligned strongly with the objectives of rehabilitation and restorative justice, thereby rendering a non-custodial sentence appropriate.
  10. Learned counsel submitted that the principle of proportionality, as enshrined in Paragraph 1.2.1 of the Guidelines, dictated that any sentence must reflect the gravity of the offense while taking into account the individual circumstances of the offender. Mr. Lagat argued that a custodial sentence would be disproportionate given the accused's background and circumstances, particularly the severe hardship



it would impose upon his dependants, including his young children who relied on him as the sole breadwinner. Counsel contended that this consideration was crucial in achieving proportionality in sentencing.

11. Mr. Lagat further submitted that the Guidelines' promotion of restorative justice, which seeks to repair harm caused by crime through dialogue and reconciliation involving the offender, victim, and community, was particularly relevant to this case. Counsel argued that the deceased's mother's testimony in open court, wherein she expressed forgiveness and confirmed that the family had received compensation from the accused, constituted powerful evidence of the accused's commitment to healing and community restoration, embodying the principles of restorative justice enshrined in Article 159(2)(c) of the *Constitution*.
12. Learned counsel emphasized that the Guidelines establish a presumption favouring non-custodial sentences for first offenders, except in cases of exceptional gravity where immediate incarceration is clearly demanded. Mr. Lagat submitted that the accused's unblemished criminal record over four decades strongly supported the application of this principle and justified leniency. Counsel argued that this incident represented an isolated and regrettable lapse in an otherwise law-abiding life spanning over four decades.
13. In addressing the accused's early guilty plea, Mr. Lagat submitted that this decision reflected remorse, acceptance of responsibility, and promoted judicial economy. Counsel argued that despite being on bond, the accused's decision to enter a guilty plea while fully aware of the risk to his liberty demonstrated honor and accountability. Mr. Lagat contended that the Guidelines recognize such pleas as warranting significant mitigation, and this factor should weigh heavily in favor of a non-custodial disposition.
14. Counsel presented compelling arguments regarding the accused's personal circumstances, submitting that family responsibilities and medical conditions constitute relevant mitigating factors under the Guidelines. Mr. Lagat argued that the accused's role as the sole financial provider for his family and his chronic diabetes, which required regular medical management, were crucial factors that militated against the imposition of a custodial sentence. Learned counsel submitted that custodial settings would significantly hinder the effective management of the accused's medical condition while imposing an avoidable burden on prison healthcare resources.
15. Mr. Lagat advanced three distinct jurisprudential frameworks to support his argument for a non-custodial sentence. First, counsel submitted that restorative justice principles, drawing from natural law and communitarianism, prioritized repairing harm and restoring relationships over purely punitive sanctions. Mr. Lagat cited St. Thomas Aquinas's conception of justice and referenced modern scholars Howard Zehr and John Braithwaite, arguing that subjecting the accused to imprisonment would risk alienating him from the healing process already in progress, thereby undermining the very objectives of restorative justice.
16. Second, learned counsel presented a utilitarian argument, submitting that Jeremy Bentham's principle of maximizing community happiness while minimizing suffering supported a probation order. Mr. Lagat argued that imprisoning the accused would cause substantial negative consequences, including the impoverishment of innocent dependants, disruption of the family unit, and unnecessary burden on prison resources, without any proportionate benefit in terms of public safety or deterrence beyond what a well-structured probation order would achieve.
17. Third, counsel invoked legal realism, submitting that this jurisprudential school acknowledged the importance of practical realities and social consequences in judicial decision-making. Mr. Lagat cited Justice Oliver Wendell Holmes and Karl Llewellyn, arguing that the facts before the court



- presented a rare and delicate context deserving of a calibrated and context-sensitive sanction that would meaningfully balance fairness, communal restoration, and the practical circumstances of the accused.
18. Learned counsel bolstered his arguments by citing persuasive judicial precedents from concurrent jurisdiction where distinguished judges had imposed non-custodial sentences in circumstances closely analogous to the present case. Mr. Lagat referenced *Republic v Elijah Kipkemoi Langat*, where Justice Serгон imposed a two-year probation despite the court's inclination toward custodial sentences, persuaded by the accused's genuine remorse, reconciliation efforts, and family responsibilities.
  19. In presenting his proposed sentence, learned counsel submitted that a comprehensive three-year probation order would be the most just, effective, and appropriate disposition. Mr. Lagat argued that such an order should include regular mandatory supervision by a Probation Officer, completion of specified hours of community service, participation in counselling or rehabilitation programmes, and periodic court reviews to monitor compliance. Counsel submitted that these proposed conditions would adequately address the seriousness of the offense, promote the accused's reform and reintegration, and safeguard the public interest without resorting to the detrimental consequences of incarceration.
  20. Learned counsel concluded his submissions by arguing that the imposition of a custodial sentence would risk undermining the moral and societal aims of justice by causing undue hardship to innocent dependants, hindering restorative processes already underway, and failing to leverage the accused's potential for rehabilitation within the community. Mr. Lagat submitted that the court should balance the gravity of the offense with the profound human costs of incarceration and the demonstrably positive potential for rehabilitation and restorative justice offered by a probation order in these unique circumstances.
  21. The lesser charge in question is punishable by a maximum sentence of life imprisonment under section 205 of the penal code. The sentence is however reserved for serious cases.
  22. The sentencing objectives in Kenya have been captured in the Sentencing guidelines 2023 to be the following: -
    - a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
    - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
    - c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
    - d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
    - e. Community protection: to protect the community by incapacitating the offender.
    - f. Denunciation: to communicate the community's condemnation of the criminal conduct.
    - g. Reconciliation: To mend the relationship between the offender, the victim and the community.
    - h. Reintegration: To facilitate the re-entry of the offender into the society.



23. Additionally, in the “Muruatetu Case”, the Supreme Court outlined the following guidelines as being applicable when the Court is giving consideration to sentencing;
- “(a) age of the offender;
  - (b) being a first offender;
  - (c) whether the offender pleaded guilty;
  - (d) character and record of the offender;
  - (e) commission of the offence in response to gender-based violence;
  - (f) remorsefulness of the offender;
  - (g) the possibility of reform and social re-adaptation of the offender;
  - (h) any other factor that the Court considers relevant.”
24. The circumstances resulting to the unfortunate circumstances are that on 20<sup>th</sup> December, 2019 at around 9:00PM the accused entered a bar that was owned by one Abel Nyakundi and he was served with a drink. After a few minutes, the deceased who worked as a matatu conductor joined the other customers at the bar but soon thereafter a quarrel ensued between the deceased and the accused and the accused slapped the deceased. The two were separated by the nightguard and the deceased ran away. The accused remained in the bar until 10:45PM when the bar was closed. The accused left the bar aboard a motorcycle together with the bar owner and he alighted at Soy Club. At about 11:30 PM the deceased and the accused met again near a petrol station which was being guarded by one John Emase. The deceased and the accused started quarrelling and fighting and John Emase went to separate them. It was at that point that the accused grabbed John Emase’s baton and hit the deceased on the head three times using the baton. The deceased fell down and the accused threw the baton on the road and started walking away. The autopsy report indicated that the cause of death was severe head injury secondary to blunt force trauma.
25. In *Wero vs R.* (1983) KLR 349, the Court of Appeal (Madan, Kneller JJA. & Chesoni, Ag. JA.), the accused had been charged with murder but was convicted for manslaughter and sentenced to eight year’s imprisonment, after he plead guilty to the reduced charge. The court held that –
- “The sentence of eight year’s imprisonment where the case was on the borderline between murder and manslaughter was legal, appropriate and not manifestly excessive.”
26. In *Andrew vs R* (1980) KLR 153, another case of plea of guilty to a reduced charge of manslaughter, the Court of Appeal (Madan & Potter JJA. & Simpson, Ag. JA.) considered the period of almost one year that the appellant had been in custody and reduced a sentence of imprisonment for eleven years to five years.
27. The general thread running across cases of such homicides is that the court will look at the circumstances of the case and the aggravating factors such as the weapon used. In the present case, the accused person used a security guard’s baton to strike the deceased three times on the head with sufficient force to cause fatal injury. This demonstrates a significant level of violence, albeit in the context of an ongoing altercation.



28. I have considered the mitigating factors in this case. The accused has demonstrated genuine remorse for his actions. He is a first-time offender who has taken responsibility by entering into a plea agreement. The pre-sentence report indicates he has a young child depending on him.
29. However, I must also consider the aggravating factors. The accused pursued a second confrontation with the deceased after their initial altercation had been resolved. The weapon used; a security guard's baton was capable of and did inflict fatal injury when directed at the victim's head. The accused struck the victim multiple times before abandoning him in a critical condition.
30. I bear in mind that the prosecution and the defence negotiated the terms of the plea bargain agreement to reduce the offence of murder contrary to section 203 of the *Penal Code* and have it substituted with manslaughter contrary to section 202 of the same Code. This means that the Director of Public Prosecution was convinced that there were extenuating circumstances rendering section 203 of the *Penal Code* not tenable within the parameters of its elements and a decision was made under Art. 157(6) & (7) to reduce the offence and have the accused charged with manslaughter. Without reviewing the decision to charge the accused person with a lesser offence but there is lack of clarity as to the compelling and substantial circumstances on reflection of the facts presented to this court. That there was sufficient grounds on self defence under section 17 and provocation as defined in section 207 and 208 of the *Penal Code* to place the offence under the elements of section 202 of the *Penal Code*. The law requires in self-defense that the issue on the facts proven establish that the accused person had a reasonable belief to use to deadly force as necessary to repel a threat of death or bodily harm. In this jurisdiction, the other element for self defence is that there must be a threat of imminent danger and the duty to retreat by the accused was not available to invalidate a self-defense claim. This is one case where I will refuse any claim by the accused person to rely on self-defence or imminent danger from the deceased as an aggressor of the conflict. The prosecution facts demonstrate that the primary aggressor was the accused person from the first scene where he slapped the deceased and in that conflict the other patrons intervened but reasonably so, the accused was at it again in the second scene of the offence as reflected by the plea bargain agreement Essentially the accused person was not acting in self-defense and was not acting in provocation. In the context of this conflict, the death of the deceased was inexcusable and unjustified. The accused in both situational analysis had the necessary intention to inflict grievous bodily harm likely to cause death of the deceased. The intention here is manifested by the accused person dispossessing the watchman of his security club and manipulating it to target, vulnerable and sensitive parts of the body of the deceased as established by the pathologist: that the cause of death was severe heady injury secondary to blunt force trauma. The inference I can draw from the facts of this offence regardless of the Plea Bargain agreement is such that the accused has harbored revenge or desire to cause serious harm. The accused by pursuing the deceased with a spirit of retaliation and revenge appeared to act with vengeful intention Equating this with malice aforethought rather than justifiable killing. All these goes to show fundamentally that aggravating factors outweigh mitigating factors of the accused person.
31. I have considered the sentencing objectives in totality. The accused person is relatively young, and I have weighed the probation officer's recommendation for a non-custodial sentence. However, given the violent nature of the offense and the need to uphold the sentencing objectives of retribution, deterrence, and denunciation, I find that a custodial sentence is appropriate in this case.
32. In that regard, I have come to the logical conclusion that 15 years' imprisonment would be an appropriate sentence. For purposes of Section 333(2) of the *Criminal Procedure Code*, the credit period of one week that the accused spent in custody shall be deducted from this sentence.
33. Orders accordingly.



DATED AND SIGNED AT ELDORET THIS 8<sup>TH</sup> DAY OF JULY, 2025

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**R. NYAKUNDI**

**JUDGE**

