



Republic v Shiboka (Criminal Case 35 of 2013) [2025] KEHC 9843 (KLR) (8 July 2025) (Sentence)

Neutral citation: [2025] KEHC 9843 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA**

CRIMINAL CASE 35 OF 2013

S MBUNGI, J

JULY 8, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

PATRICK OPONGA SHIBOKA ACCUSED

SENTENCE

1. The Accused, Patrick Oponga Shiboka, was charged and convicted for the offence of murder contrary to Section 203 as read with Section 204 of the penal code. The particulars were that on 9th July 2013 at Kenya Industrial Estates in Kakamega Municipality within Kakamega County, murdered Japheth Indimuli. The Judgment was written by Judge S. Chirchir, I heard the Mitigation.
2. In his mitigation, through his Advocate, Mr. Nyaberi, the accused told the court that he was remorseful and regretted his actions. He stated that he has a family that depends on him. He claimed that the incident was accidental, and he even took the deceased to the hospital and was very remorseful that the deceased had died.
3. He stated that he has been in remand since 2013 and has since learnt his lesson and prays for a non-custodial sentence.
4. The prosecution, on the other hand, noted that a life had been lost. That the deceased was a son and a husband, and his family had been affected not just financially but psychologically, and prays that the court exercise its duty and offer a custodial sentence to the accused.
5. The pre-sentence report was filed on 03/06/2025.
6. In the pre-sentencing report, the probation officer recommends for leniency on account of the accused's remorsefulness and strong community support in support of the principle of rehabilitation and justice, but given the seriousness of the offence and interest of justice, left it to the court's discretion.



7. From the pre-sentencing report, the accused has strong family and community support and bond. They vouch for his character and lifestyle in society. The accused is remorseful of his actions that led to the death of the victim, claiming that he even took the deceased to the hospital to seek medical care. He acknowledged the seriousness of the offence.
8. On the other hand, the deceased family is yet to come to terms with the death of their kin and pray that justice be served, and resistance to the plea of leniency and pray that they be delivered for the profound loss of their son and husband, who was the family's sole provider.
9. I have considered the circumstances surrounding the offence herein and sentiments by the victim's family, community, local administration and the accused's family.
10. I have considered the accused person's mitigation through his lawyer. The accused person says that he is remorseful and regrets his actions. The victim's family are still bitter towards the accused persons because they feel that although he claimed that he and the deceased were friends, they have lost a father and a son, and they are still in emotional distress.
11. Considering sentiments by all people interviewed by the probation officer, I am of the view that a non-custodial sentence will not be appropriate for the accused person, despite his being remorseful.
12. This court has to balance between the need to have the accused atone for his actions and the need to exercise leniency, given the circumstances of the case.
13. The Supreme Court in the case of *Francis Karioko Muruatetu v Republic* [2017] eKLR enunciated the relevant guidelines to be considered before sentencing. The specific guidelines are as follows: -
 - 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 considered relevant.
14. Under the *Judiciary sentencing Policy guidelines*, the objectives of sentencing are: -
 1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
 2. Deterrence: To deter the offender from committing a similar offence subsequently, as well as to discourage other people from committing similar offences.
 3. Rehabilitation: To enable the offender to reform from his criminal disposition and become a law-abiding person.
 4. 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.



5. Community Protection: to protect the community by incapacitating the offender.
6. Denunciation: To communicate the community's condemnation of the criminal conduct.
15. Section 204 of the Penal Code provides that a person convicted of murder shall be sentenced to death however the mandatory nature of the death penalty has been outlawed by the Supreme Court in the case of Francis Muruatetu & another v Republic [2017] eKLR in which the Court while retaining the death sentence found that its mandatory nature was unconstitutional and for the purposes of this sentence had this to say: -

“ 45. To our minds, what Section 204 of the Penal Code is essentially saying to a convict is that he or she cannot be heard on why in all the circumstances of his/her case. The death sentence should not be imposed on him or her, or that even if he or she is heard, it is only for the purposes of the record as at that time of mitigation, because the court has to impose the death sentence nonetheless, as illustrated by the foregoing Court of Appeal decision. Try as we might, we cannot decipher the possible rationale for this provision. We think that a person facing the death sentence is most deserving to be heard in mitigation because of the finality of the sentence.

46. We are of the view that mitigation is an important congruent element of fair trial. The fact that mitigation is not expressly mentioned as a right in the Constitution does not deprive it of the necessity and essence in the fair trial process. In any case, the right pertaining to fair trial of an accused pursuant to Article 50 (2) of the constitution are not exhaustive.”

The court therefore proceeded to pronounce itself thus:

“ 58. We now lay to rest the quagmire that has plagued the court with regard to the mandatory nature of Section 204 of the Penal Code. We do this by determining that any court dealing with the offence of murder is allowed to exercise judicial discretion by considering any mitigating factors in sentencing an accused person charged with and found guilty of that offence. To do otherwise will render a trial, with the resulting sentence under Section 204 of the Penal Code unfair, thereby conflicting with article 25(c), 28, 48, and 50(1) and (2) (g) of the Constitution.

16. In the circumstances of this case, given that the accused took a life, a custodial sentence would be appropriate. The accused person ought to feel the consequences of his actions.
17. I note that the accused is 46 years old and a first-time offender with a possibility of being reformed.
18. Taking everything into consideration, I hereby sentence the Accused to 20 years in prison. In compliance with Section 333(2) of the Criminal Procedure Code, six (6) months which the accused has been cumulatively in custody shall be deducted from the 20 years.
19. The Accused has the right of Appeal limited to 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 8TH DAY OF JULY, 2025

S.N MBUNGI



JUDGE

In the presence of:

Court Assistant – Elizabeth Angong’a

Ms Chala for ODPP

Accused, present.

Nyaberi Advocate for accused present.

