



**Republic v Awinja (Criminal Case E011 of 2024)  
[2025] KEHC 12808 (KLR) (17 September 2025) (Sentence)**

Neutral citation: [2025] KEHC 12808 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL CASE E011 OF 2024  
JN KAMAU, J  
SEPTEMBER 17, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**BENSON ORODHO AWINJA ..... 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 16<sup>th</sup> June 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 27<sup>th</sup> June 2024, at about 2300 hours, Thomas Imbwa (hereinafter referred to as the “deceased”) went to the home of his brother, the Accused person herein, while armed with a panga. They got into an argument over a budget of the funeral arrangement of their aunt who had died. The Accused person was the treasurer.
3. The argument culminated in a fight where the deceased wanted to cut the Accused person. The Accused person overpowered him, snatched the panga from him and cut him on the head whereafter he left the scene to unknown place. Eunice Namaemba who was the Accused person’s wife raised alarm but no one responded.
4. The next day on 28<sup>th</sup> June 2024 at about 0600 hours, the Accused person’s wife informed Reuben Mboya, brother to both the deceased and the Accused person, of what had transpired the previous night. He went to the scene where he found the deceased lying on the ground. He tried waking him up but he did not respond. He took off the deceased’s jacket and realised that he had several cut wounds on the left side of the head and was dead. He informed the Area Chief of the incident who in turn informed police officers who arrived at the scene.



5. With the help of members of the public, the police officers recovered the murder weapon, a panga, from the roof top of Accused person's house. They also removed the body of the deceased to Coptic Mission Morgue. The Accused person surrendered himself at Luanda Police Station on the same day. After the investigations were concluded, he was charged with the offence of murder.
6. A postmortem examination on the body of the deceased was carried out on 2<sup>nd</sup> July 2024. The Pathologist formed the opinion that the cause of the deceased's death was severe head injury secondary to trauma from a sharp object. The Postmortem Report dated 2<sup>nd</sup> July 2024 was produced as Exhibit 1.
7. Having entered into a Plea Agreement, the Accused person proposed that he serves a sentence of three (3) non-custodial sentence while the Prosecution recommended a sentence of ten (10) years imprisonment.
8. In his mitigation, the Accused person stated that he was a first-time offender. He expressed remorse and said that he deeply regretted the incident. He contended that he had a wife and three (3) minor children who depended on his casual work for their basic needs. He said that his family had forgiven him.
9. He pointed out that he had exhibited positive change and was willing to undergo anger management. He requested to be placed on three (3) years' probation to enable him undergo social programming and problem-solving techniques as had been proposed by the Probation Office.
10. On its part, the Prosecution submitted that a custodial sentence was sufficient punishment as a life was lost, the deceased having sustained serious head injuries as per the Postmortem Report. It said that the said sentence would serve as an example to other would be offenders.
11. According to the Pre-Sentence Report of Mariam Korir, Probation Officer, Vihiga County, that was dated 15<sup>th</sup> July 2025 and filed on 16<sup>th</sup> July 2025, the Accused person was thirty-seven (37) years old. While staying with his deceased aunt, he attended Masumbi Primary School in Siaya County. He, however, dropped out at Class Six (6) due to poverty. He started working as a casual labourer at Masumbi Sub-location in Siaya County and later moved to his father's land in Ekwanda, Luanda Sub-County. He later married and he and his wife were blessed with three (3) children who were all minors. He was a Christian and had been surviving on casual jobs and fetching water for the area residents using his donkey.
12. Prior to his arrest, he used to abuse alcohol but stopped when he was released on bond. He had no health complications and was a first offender. He admitted having committed the offence explaining that he acted in self-defence after the deceased attacked him after a confrontation. He reported that if he had not acted fast in defending himself, he could have been the one who was killed. He prayed for forgiveness from the court, his family and the community at large.
13. His family pointed out that the deceased and the Accused person were brothers and that the offence happened by bad luck and they did not wish to lose two (2) family members. They explained that the Accused person's family was suffering and lacked basic needs since he was the sole breadwinner. They blamed the deceased for the offence and wished that the Accused person be considered for non-custodial sentence to re-unite with his family. They believed that he acted in self-defence.
14. The Local Administration and the community reported that the Accused person lived well and related well with people in the community. They pointed out that he was a trust-worthy person and that they had not heard any criminal implications against him. They blamed the deceased for the offence. They proposed that he be considered for a non-custodial sentence.



15. The Probation Office observed that the Accused person was fit for a Probation Order for a period of three (3) years.
16. 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.
17. 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.
18. 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.
19. Killing someone is an abomination in the society. Justice not only needed to be done but it had to be seen to be done.
20. The Pre-Sentence Report showed that both the Accused person and the deceased previously enjoyed a good relationship but that on the material day, the deceased visited the Accused person him and requested to see the budget of a funeral that the family members had proposed. He picked a quarrel and slapped the Accused person with the panga that he was carrying. It was then that the Accused person snatched the panga from him and cut him on the head.
21. It was clear from the facts of the case and the Pre-Sentence Report that the Accused person killed his brother. Although the deceased attacked him first, he ought not to have cut him on the head several times. The act of cutting him several times with a panga was not to restrain him from attacking him but rather, it was intended to cause him harm. The extreme anger was not worth the trouble. Even so, this court noted that the deceased was the aggressor at the material time and the Accused person acted in self-defence.
22. This court also noted that the said Pre-Sentence Report had indicated that both the Accused person and the deceased had been seen drinking alcohol before the incident occurred which could have aggravated the circumstances of the offence.
23. It was immaterial that the deceased was the aggressor because there was no knowing if he would have caused fatal injuries to the Accused person with the panga that he had at the material time. It was also immaterial that the family did not wish to lose two (2) sons. A death occurred and had to be avenged for justice not only to be done to the deceased but also justice must be seen to be done.
24. 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 five (5) years' imprisonment was suitable and adequate herein purely because the Accused person acted in self-defence.
25. The Accused person stayed in custody between 8<sup>th</sup> July 2024 and 19<sup>th</sup> November 2024 when he was arrested and released on bond respectively and again from 16<sup>th</sup> June 2025 and 16<sup>th</sup> September 2025



when he was convicted and sentenced respectively. This is a period that ought to be taken into account in line with Section 333(2) of the Criminal Procedure Code Cap 75( Laws of Kenya).

**Disposition**

26. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to five (5) years' imprisonment to run from the date of this Sentence.
27. For avoidance of doubt it is hereby ordered and directed that the period that the Accused person spent in custody between 8<sup>th</sup> July 2024 and 19<sup>th</sup> November 2024 and 16<sup>th</sup> June 2025 and 16<sup>th</sup> September 2025 be taken into account when computing his sentence in accordance with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).
28. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS 17<sup>TH</sup> DAY OF SEPTEMBER 2025**

**J. KAMAU**

**JUDGE**

