



Republic v Muhindi (Criminal Case 4 of 2022)
[2025] KEHC 12884 (KLR) (17 September 2025) (Sentence)

Neutral citation: [2025] KEHC 12884 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE 4 OF 2022
JN KAMAU, J
SEPTEMBER 17, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

JOSEPH LUVABULA MUHINDI ACCUSED

SENTENCE

1. On 28th May 2025, this court convicted the Accused person herein for the offence of the murder of Sanny Ambalwa (hereinafter referred to as “the deceased”) contrary to Section 203 as read with Section 204 of the Penal Code Cap 63 (Laws of Kenya) pursuant to Section 215 of the Criminal Procedure Code Cap 75 (Laws of Kenya).
2. In his mitigation, the Accused person stated that he was born in 1954 and he was now seventy-one (71) years. He said that he was arraigned in court on 21st September 2016 when he took plea. Since then he has been in remand, which is about nine (9) years. He asked this court to take into account this period. He is a family man married to one (1) wife and he was blessed with three (3) children including the deceased.
3. He termed the incident that occurred as unfortunate. He averred that he had not planned the incident. He regretted the death of the deceased who was his son. He expressed remorse and asked for leniency. He pointed out that the Bible says that a man will live for seventy (70) years and that it was by the grace of God that he was still alive. He prayed that the court looks at the Pre-Sentence Report and make an independent decision which they proposed ought to be non-custodial.
4. On its part, the Prosecution urged this court to mete out a stiff custodial sentence because the Accused person had anger issues and his own family member including his own son could not vouch for him being released as could be seen in Paragraph 4 on page 2 of the Pre-Sentence Report. It added that the



family did not want the court to show him leniency as was shown on Page 4 of the said Pre-Sentence Report.

5. It stated that the Accused person admitted to having committed the offence. He ought not to have wasted the court's time in hearing this matter. The Pre-Sentence Report was very clear on Page 5 that his life would be in danger. It therefore prayed for a custodial sentence.
6. According to the Pre-sentence Report of J. Sahani, Probation Officer, Vihiga County dated and filed on 13th August 2025, the Accused person was seventy-one (71) years old. He professed the Christian religion. He attended Munzatsi Primary and Secondary Schools in Hamisi Sub-County where he performed well academically. However, due to financial constraints at home, he was unable to pursue further education. He engaged in menial jobs to sustain himself but later moved to Nairobi where he worked as an untrained Primary School Teacher before turning to construction and farmhand jobs.
7. He returned home in 1982 in search of a marriage partner. He married three (3) times. His first wife left him shortly thereafter due to his violent behavior and did not bear any children. His second marriage was blessed with four (4) children. However, one of the children passed away. The said marriage also ended due to his abusive behavior. His second wife died shortly after she left the marriage due to his abusive behaviour. She died shortly thereafter from injuries that she sustained from his beatings.
8. He married a third time. However, this marriage was not blessed with children, was not violent and lasted until his arrest. The third wife was accredited for having influenced him to join the Pentecostal Assemblies of God (PAG) where he applied to train in theological studies but failed to join due to financial difficulties.
9. He had a strained and a hostile relationship with his children. He admitted having killed the deceased, his firstborn child, and who he frequently was in conflict with, but maintained that he had no prior intention of doing so. He regretted the loss of life of the deceased and recalled how they initially shared a good relationship which deteriorated after the deceased remarried. He averred that the deceased's new wife was divisive and negatively influenced the deceased leading him to adopt destructive behaviors such as bhang smoking and consuming of alcohol.
10. He expressed concern for the welfare of the deceased's children suggesting that he could assist in their upbringing now that their father was dead. He pleaded for leniency citing his advanced age and the extended period he had spent in remand since 2016.
11. His family strongly opposed his plea for leniency, stating that his attitude towards the family had been consistently negative as evidenced by the harsh treatment inflicted on his two (2) spouses, his brother and his children. The Accused person once speared his second born son on his leg for consuming ugali that was intended for poultry. The said son fled home and only returned after the Accused person was arrested. He vowed to flee home if the Accused person was released.
12. The Local Administration and the community opined that the Accused person was a violent and uncompromising man who directed his aggression not only towards family members but also towards neighbours. They strongly opposed his release and stated that his safety upon release was not guaranteed.
13. The Probation Officer confirmed that he had no familial reintegration in the society and faced hostility by the family and community. His behaviour patterns were said to point to a person who exhibited extreme temperament with his anger issued being manifested through violence. He was said to have been short tempered and quick to pick a spear or bow and arrow and charge towards the person who he differed with. The Probation Officer opined that the Accused person was not suitable for community rehabilitation due to cultural and social excommunication.



14. 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.
15. It was important that the sentence communicate to the community, condemnation of their 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.
16. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of the offence at the time of sentencing them, chances of the Accused person being reintegrated in the society would be next to impossible as there were possibilities of being harmed.
17. After serving a sentence, the offender could rejoin society as a reformed person capable of re-integration into the society. He would have learnt his lesson and others would have learnt through him. Killing someone was an abomination in the society and that was why his family and the 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.
18. This court looked at the Post-mortem Report dated 18th September 2016 and noted that the deceased died as a result of cardiorespiratory decomposition secondary to fourth degree burns. The events preceding the incident were that the Accused person was taking care of the deceased's son, one David Anyuka after his mother left her matrimonial home. He felt that the deceased's new wife was mistreating the boy by overworking him on the farm. On the material day, he confronted the said wife and demanded that he stop misusing the said boy since she was not responsible for his welfare. The wife reported the incident to the deceased when he returned from his boda boda venture.
19. The deceased went to the Accused person's house and attacked the Accused person forcing him to hide in the bedroom. The Accused person then took a spear and speared the deceased in the neck. The deceased died on the spot. His body was later found under his burning motorcycle. This was evidence of serious assault of the deceased by the Accused person.
20. Although the Accused person pleaded for leniency citing his old age, this court did not find it prudent to grant him a non-custodial sentence due to the nature of the offence. The injuries the deceased sustained showed the malice that the Accused person had and showed his intention of killing him. He may have loved the deceased and sought to take care of his children. However, killing someone had serious consequences and the Accused person could not be left to go scot free.
21. Having said so, this court noted that it was the deceased who went to the Accused person's house and attacked him. He was the aggressor and also did something that was abominable, attacking his own father. The Accused person was justified to react but not to the extent that he did resulting in the death of the deceased. The act of burning him removed sympathy of this court towards him as he went far beyond expected provocation of a father who had been attacked by his child.
22. Notably, the Accused person was seventy one (71) years of age. This court was enjoined to take into account his rights under Article 57 (c) and (d) of *the Constitution* of Kenya, 2010 that provides as follows:-

“The State shall take measures to ensure the rights of older persons:-



- a. ...
- b.
- c. to live in dignity and respect and be free from abuse; and
- d. to receive reasonable care and assistance from their family and the State.”

23. Further, this court had due regard to Clause 3.34 and 3.35 of the Sentencing Policy Guidelines regarding sentencing of elderly persons where it is directed that:-

3.3.4 When imposing sentencing orders against terminally ill and elderly offenders, a court should ensure that the sentence imposed does not amount to an excessive punishment in view of the extent of illness and age, as well as in light of the offence committed (emphasis court). In particular, the court should ensure that the sentence imposed does not amount to cruel, inhuman or degrading treatment in view of the extent of illness or age of the offender.

3.3.5 Non-custodial sentences – or suspended sentences - should be considered unless, in light of the nature and seriousness of the offence committed and other factors, justice would demand the imposition of a custodial sentence (emphasis court).

24. Having considered the facts of this case and the Accused person’s mitigation and weighed against the death sentence that was prescribed for the offence of murder under Section 204 of the Penal Code, this court came to the firm conclusion that a non-custodial sentence would be unjust as a life was lost in very unfortunate circumstances. Indeed, the Probation Office had found that the Accused person was unsuitable for a non-custodial sentence. He stood excommunicated by his own family and the community who called for a stiff sentence to be meted out upon him. His family had long suffered from his violent behaviour. It was the considered view of this court that a sentence of twenty (20) years imprisonment would be suitable and adequate herein.

25. Going further, this court was mandated to consider the period the Accused person 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).

26. 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).

27. Further, Clause 4.6.20 (ix) of the Judiciary Sentencing Policy Guidelines provides that:-

“The Sentencing Court shall be guided by the sentencing principles and objectives set out in Part I of these the Guidelines in all resentencing hearings. The following mitigating factors were set out by the Supreme Court as particularly relevant in a resentencing hearing:...

(ix) Time already spent in prison by the convict...”

28. 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.



29. The Accused person was arrested on 10th September 2016. Although he was granted bond, he did not seem to have posted the same. He was convicted on 28th May 2025 and had remained in custody during his entire trial. The time he remained in custody therefore ought to be taken into consideration while computing his sentence.

Disposition

30. Accordingly, having convicted the Accused person of the offence of murder contrary to Section 203 as read with 204 of the Penal Code, he is hereby sentenced to twenty (20) years imprisonment which will run from today.
31. For the avoidance of doubt, the period the Accused person spent in custody between 10th September 2016 and 16th September 2025, be and are hereby taken into account while computing his sentence in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).
32. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 17TH DAY OF SEPTEMBER 2025.

J. KAMAU

JUDGE

