



**Republic v Lukalu (Criminal Case 11 of 2023)
[2025] KEHC 12820 (KLR) (16 September 2025) (Sentence)**

Neutral citation: [2025] KEHC 12820 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE 11 OF 2023
JN KAMAU, J
SEPTEMBER 16, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

RICHARD GIRAKWA LUKALU ACCUSED

SENTENCE

1. On 28th May 2025, this court convicted the Accused person herein for the offence of the murder of Benard Misango Saba (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 asked for leniency and mercy and indicated that he understood the gravity of the offence. He pointed out he was twenty three (23) years of age when he made a grave mistake and committed the offence. He contended that he was now twenty nine (29) years of age having spent six (6) years in custody.
3. He urged this court to consider that he had sought forgiveness of the deceased’s family and in fact assisted it during the funeral arrangement. He said that he was remorseful and deeply regretted the incident. He prayed for a second chance in life to take care of his nine (9) year old child. He further stated that he was socially accepted by the community and that the deceased’s family had in fact forgiven him. He also averred that he had acquired some leadership skills from the many courses he undertook while in custody.
4. On its part, the Prosecution asked this court to consider that a young man of thirty five (35) years of age with a wife and three (3) children lost his life due to the Accused person’s anger issues. It added that the deceased’s family had lost fatherly love. It stated that although the Accused person had stated



that his family supported that of the deceased during his funeral arrangements, the deceased's family had indicated that the same was insufficient.

5. It was its contention that a custodial sentence was most appropriate in the circumstances of the case herein to teach him a lesson due to the anger issues that caused the deceased's death.
6. According to the Pre-sentence Report of Debora Okode, Probation Officer, Vihiga County dated and filed on 13th August 2025, the Accused person was twenty-nine (29) years old. He professed the Christian religion. He attended Keveye Primary School and proceeded to Chandumba Secondary School where he studied up to Form Three (3) due to financial constraints. Thereafter, he engaged in various small businesses to sustain himself and as at the time of his arrest, he was working as a motorbike rider in Chavakali area.
7. He was in a casual relationship with one Violet Afandi and they were blessed with one (1) child. He was of good health but had a history of alcohol abuse which may have contributed to the offence.
8. He was a first offender and expressed remorse of his actions and pleaded for leniency of court. He contended that he had no intention of killing the deceased. He stated that following the incident, he sent his brother to the victim's family to convey his apologies and explain that it was an accident and further to seek forgiveness on his behalf.
9. His family was aware of the seriousness of the offence that he had committed and could not imagine that he committed the same. They vouched for his innocence. They stated that he had maintained good relations with community members and sought leniency of the court.
10. The deceased's family had forgiven him on the ground that the offence had already occurred and could not be undone.
11. The Local Administration and the community opined that the Accused person had no criminal history in the community and that this was his first offence. They believed that his actions were influenced by drugs. They were willing to accept him back in the community if he would be reintegrated back.
12. The Probation Office stated that the Accused person had undertaken several courses while he was in remand which were said to have aided his rehabilitation. While it opined that the social inquiry led it to determine that he was a suitable candidate for community rehabilitation, the nature of the offence limited it to expressly recommend the same. It left the matter at the discretion of court.
13. 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.
 1. 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.
 2. 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.



3. 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 hence justice not only needed to be done but it had to be seen to be done.
 4. This court looked at the Post-mortem Report dated 1st April 2019 and noted that the deceased died as a result of severe head injury secondary to trauma mostly caused by a blunt object. The Accused person hit the deceased with a tool box on the head. This was evidence of serious assault of the deceased by the Accused person.
 5. Although the Accused person expressed remorse and his family pleaded for leniency, this court did not find it prudent to grant them 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. The Accused person may have been young at the material time but he was old enough to appreciate the gravity of his action. He was culpable and could bear responsibility as he was above eighteen (18) years of age. Indeed, killing someone had serious consequences and justice had to be done to the deceased person.
 6. 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 may have been suitable for a non-custodial sentence but restrained itself from recommending the same due to the nature of the offence. It was the considered view of this court that a sentence of fifteen (15) years imprisonment would be suitable and adequate herein. The sentence would have been lower had he not taken the court through the trial. Indeed, this court would have meted out against the Accused person a lower sentence had he entered into a Plea Agreement.
 7. 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).
 8. 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).
22. Further, the [Judiciary Sentencing Policy Guidelines](#) provide that: -
- “The proviso to section 333 (2) of the [Criminal Procedure Code](#) obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an offender, the court



must take into account the period in which the offender was held in custody during the trial.”

23. The requirement under Section 333(2) of the *Criminal Procedure Code* was restated by the Court of Appeal in *Ahamad Abolfathi Mohammed & Another v Republic* [2018] eKLR.
24. The Accused person was arrested on 20th March 2019. Although granted bond, he did not seem to have posted it. He was convicted on 28th May 2025 having 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

25. 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 fifteen (15) years imprisonment which will run from today.
26. For the avoidance of doubt, the period the Accused person spent in custody between 20th March 2019 and 15th September 2025 be and is hereby taken into account while computing his sentence in line with Section 333(2) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya).
27. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 16TH DAY OF SEPTEMBER 2025

J. KAMAU

JUDGE

