



**Republic v Baya (Criminal Case E025 of 2022)
[2024] KEHC 2792 (KLR) (12 March 2024) (Sentence)**

Neutral citation: [2024] KEHC 2792 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE E025 OF 2022**

**A. ONG'INJO, J
MARCH 12, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

HAMISI MASHA BAYA ACCUSED

SENTENCE

1. The accused Hamisi Masha Baya faces a charge of murder contrary to Section 203 as read together with Section 204 of the *Penal Code*.
2. Particulars of the offence are that Hamisi Masha Baya on 19th day of August 2022 at Bombo Area, in Kisauni Sub-County within Mombasa County murdered Clarence Safari Banzi.
3. The accused was found guilty of the offence of murder and convicted. Ms. Memia, the accused person's advocate mitigated on his behalf that the accused person was a freelancer casual worker and resident of Bombo area in Bamburi. That the offender is a family man and a father to 3 young children who are in the custody of their mother, and he has siblings and an extended family that entirely depends on him. That the offender hopes that he can rejoin the family to fend for them. That the offender suffered from mental illness prior to committing the offence, that he is a first offender, that he is remorseful and seeks for leniency of the court. Ms. Memia Advocate prayed for non-custodial sentence.
4. This court called for Pre-Sentence Report and Victim Impact Statement which were filed on 23rd and 24th January 2024 respectively.
5. The Pre-Sentence Report dated 23rd January 2024 and prepared by Mr. Mutisya Kioko, the Probation Officer Mombasa indicates that the offender is a youthful man aged 37 years but shows signs of mental disturbance which had not been attended to until he committed the offence. That is currently on psychiatric medication and shows a positive progress and that his family is supportive towards his treatment and reintegration, and they look forward to assisting him gain full mental recovery. The



report says that the offender was a major contributor to the welfare of his family members and that socially, he is reported as a responsible person who has coexisted well with other family members. That prior to his sickness, he had never been violent or inclined to criminal behavior. The offender was ranked as low risk offender.

6. The Victim Impact Statement Report dated 23rd January 2024 states that the offender and the victims hail from the same family in the same compound. That they still live in fear of the offender on remembering the offence and how it was committed. That the offence has caused loss of a father and breadwinner in the victim's family. The secondary victims prayed that since the matter has come to an end, the court should expedite its mandate in delivering justice and mete out a sentence commensurate to the offence committed.
7. This court has considered the accused person's mitigation, the circumstances of this case, the Pre-Sentence Report, and the Victim Impact Statement. From the medical report prepared by Dr. Ilham Mohamed, Consultant Psychiatrist, the accused person was diagnosed with poly substance use disorder. He was found to have been abusing cannabis, muguka and cigarettes. He did not have a history of mental illness and the doctor found that he was fit to plead. The manner in which the offence was committed makes this court find that a deterrent sentence that mirrors the seriousness of the offence is called for. The accused person deprived the deceased of his life contrary to Article 26 of the Constitution of Kenya, 2010 and the breach of the Constitution calls for a custodial sentence. This court therefore sentences the accused to serve 25 years in prison. The sentence to run from 19th September 2022 when the accused was first arraigned in court. Right of appeal within 14 days explained.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,
THIS 12TH DAY OF MARCH 2024.**

HON. LADY JUSTICE A. ONG'INJO
JUDGE

In the presence of: -

Etropia- Court Assistant

Mr. Ngiri for the State

Ms. Memia Advocate for the Accused

Accused present in person

HON. LADY JUSTICE A. ONG'INJO
JUDGE

Court: Copies of Proceedings, Judgment and Sentence to be supplied to Defence and State.

HON. LADY JUSTICE A. ONG'INJO
JUDGE

12.3.2024

