



Republic v Savai (Criminal Case 50 of 2021) [2024] KEHC 4678 (KLR) (15 April 2024) (Sentence)

Neutral citation: [2024] KEHC 4678 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE 50 OF 2021**

JN KAMAU, J

APRIL 15, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

WILBERFORCE SAVAI ACCUSED

SENTENCE

1. The Accused person 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 Agreement on 30th January 2024 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 18th September 2014 at around 8.00pm, Ezekiel Sakwa (hereinafter referred to as the deceased) was in his house in Musinji village. Elizabeth Kavayi came to assist to milk a cow and cook their dinner. At around 9.00 pm, the Accused person who was a grandson to the deceased arrived and demanded a sum of Kshs 28,000/= from the deceased. The deceased told him that he did not have money. However, the Accused person insisted that he give him the money.
3. A quarrel ensued and the Accused person wrestled the deceased to the ground. The Accused person then took a panga and started cutting him all over the body. The deceased tried to escape but the Accused person caught up with him in the kitchen and continued cutting him on the back.
4. When Elizabeth Kavaya saw what had happened, she went and called one Silas Sakwa. When they got to the scene, the deceased was already dead and lying in a pool of blood in the kitchen. The said Silas Sakwa reported the matter at Cheptulu Police Patrol Base. An officer came to the scene and commenced investigations. The deceased's body was moved to Vihiga District Hospital mortuary.
5. The Accused person who had run off with the murder weapon was seen boarding a matatu at Kaptik bus stage. Bodaboda men followed the aforesaid matatu and intercepted it at Kapsasur AP Post. After



- being interrogated, the Accused person led the investigators to Musunji forest where he had hidden the murder weapon. After investigations were carried out, he was charged with the offence before court.
6. The cause of the deceased's death was determined to have been excessive hemorrhage (exsanguination) secondary to multiple cut wounds. The Postmortem Report dated 24th September 2014 was produced as evidence in this court and marked as Exhibit 1.
 7. Having entered into a Plea Agreement, both the State and the Accused person urged this court to sentence the Accused person to ten (10) years imprisonment.
 8. In his mitigation, the Accused person said that the fact that he pleaded guilty to the offence of manslaughter pointed to his remorsefulness. He pointed out that he was arrested when he was of youthful age and that he had been able to control his anger for the nine (9) years that he had been in remand, which period he urged this court to consider while meting out sentence against him.
 9. He asserted that he had not had any discipline case against him. He contended that he had learnt the Bible and attended classes which had assisted him appreciate the concept of rehabilitation.
 10. On its part, the Prosecution noted that the Pre-Sentence Report was positive. It urged this court to sentence the Accused person to ten (10) years imprisonment to enable him be rehabilitated for having killed his grandfather.
 11. According to the Pre-Sentence Report of Benard Mwembe, Probation Officer, Vihiga County that was dated 12th March 2024 and filed on 15th March 2024, the Accused person was thirty-two (32) years old, having been born in 1991. He attended Shiru Primary School but dropped out in Standard Six (6) due to lack of school fees. He engaged in timber milling before his arrest. He was not married and suffered from ulcers.
 12. He admitted to having committed the offence and said that he was remorseful of the unfortunate episode. He attributed it to the deceased's intolerable provocation. He pleaded with this court to exercise leniency. He asserted that he was intoxicated at the time of committing the offence. He stated that if he was released, he would seek for forgiveness and reconciliation from the family, relatives and community. He averred that the offence had been an eye-opening experience that had redefined his perspectives about life.
 13. His family was ready to welcome him back home and assist him adjust. It was their prayer that he be released on non-custodial sentence. The secondary victims were bitter with him for having killed their grandfather. They were hurt and considered his release on a non-custodial sentence unpalatable. It was their prayer that the law takes its course for him to pay his actions.
 14. They pointed out that several members of the family condemned the killing and termed it embarrassing, shameful and horrible. They pointed out that he was violent and a trouble maker while under the influence of alcohol and drugs.
 15. The Local Administration viewed him as temperamental, unpredictable, impulsive and quick to throw his punches at real or imagined insults. According to the Area Chief, misfortune struck the family with members dying in the home while others sold their land and moved away. The community blamed his overindulgence in alcohol and drug abuse and uncontrolled anger for his unbecoming behavior. They had united against him as a common enemy and did not wish to associate with him.
 16. The Probation Officer opined that with the support from his immediate family and the need to address his risks, a community-based mode of rehabilitation would be an appropriate option. He



recommended a non-custodial sanction by way of a probation order for him to be rehabilitated in the community for a period of three (3) years.

17. 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.
18. 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.
19. 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.
20. Killing someone is an abomination in the society and that explains why the Accused person's family and 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.
21. Although the Accused person had never been charged with any offence previously prior to the incident and the fact that he had sought leniency, it was clear that he intended to kill the deceased. The nature of the injuries that the deceased sustained showed the malice that the Accused person had at the material time. The deceased must have died a harrowing death as the Accused person cut him several times with a panga.
22. From the facts that were given in the Pre-Sentence Report, the Accused person killed the deceased who was his grandfather for having refused to share proceeds of sale of land with him. This court disagreed with his explanation that the incident occurred due to the intolerant provocation by the deceased.
23. Instead, the facts of the case pointed to intolerable provocation and lack of anger management on his part. He followed the deceased even after he had run away. The deceased's death was unwarranted as the money did not belong to him. His behaviour smacked of a spoilt child who felt entitled to acquire free things in life. It was for that reason that this court disagreed with the recommendation of the Probation Officer that this court metes out on him a non-custodial sentence.
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 fifteen (15) years imprisonment was suitable and adequate herein purely because the Accused person entered into a Plea Bargain Agreement. If the matter had proceeded as a murder case, this court would have meted out on him a stiffer sentence.
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, Clauses 7.10 and 7.11 of 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.”

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 first arraigned in court on 2nd September 2014. He was convicted on 25th March 2024. This was a period that therefore ought to be taken into consideration while computing his sentence.

DISPOSITION

30. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to fifteen (15) years imprisonment to run from the date of this Sentence.

31. For the avoidance of doubt, the period from when he was first arraigned in court on 2nd September 2014 until 14th April 2024 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).

32. Orders accordingly.

DATED AND DELIVERED AT VIHIGA THIS 15TH DAY OF APRIL 2024

J. KAMAU

JUDGE

