



**Republic v Kingiri (Criminal Case 59 of 2021)  
[2024] KEHC 7030 (KLR) (13 June 2024) (Sentence)**

Neutral citation: [2024] KEHC 7030 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL CASE 59 OF 2021**

**JN KAMAU, J**

**JUNE 13, 2024**

**BETWEEN**

**REPUBLIC ..... STATE**

**AND**

**MATAYO MMBWAGA KINGIRI ..... 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 5<sup>th</sup> February 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 are that on 13<sup>th</sup> July 2018 at Itegero village Sabatia Sub County, the 1<sup>st</sup> Accused person had a disagreement with his wife, the deceased herein and she went her father’s home in the same village. Abraham Kimanani (hereinafter referred to as “PW 1), the deceased’s brother was not home. She therefore slept outside the door of the house.
3. Alfred Imili (hereinafter referred to as “PW 2”) saw the deceased with the 2<sup>nd</sup> Accused person, Kennedy Ayiga, having sex. The said Kennedy Ayiga left immediately after he arrived. When PW 1 arrived at around 5.30pm, PW 2 informed him what he had found. As he was explaining to PW 1 what had happened, the 1<sup>st</sup> Accused person arrived. On learning of what had happened, he beat the deceased in front of PW 1 and PW 2. PW 2 left. PW 1 helped the deceased to the house after the 1<sup>st</sup> Accused person left. The 1<sup>st</sup> Accused person stated that the deceased would have to go back to their home and left with her suitcase.
4. When PW 1 came back at about 1.00 am, he found the deceased dead. The investigations pointed to the 1<sup>st</sup> Accused person having attacked the deceased when she was left at her father’s house.



5. The Postmortem was carried out on 19<sup>th</sup> July 2018 at Vihiga Referral Hospital where it was established that the cause of death was due to excessive bleeding caused by a severe cut on the vagina. The Post Mortem Report dated 19<sup>th</sup> July 2018 was produced as an exhibit in their matter and was marked as Exhibit 1.
6. Having entered into a Plea Agreement, the Accused person urged this court to sentence him to ten (10) years. On its part, the State recommended a sentence of twelve (12) years imprisonment.
7. In his mitigation, the Accused person pointed out that he was a first offender. He was remorseful and regretted his actions. He stated that he had been in remand for almost five (5) years and had demonstrated change in his ways and thinking and was now a born again Christian. He noted that although sentencing was a discretion of court, he prayed that he be imprisoned for ten (10) years. He urged the court to consider the time he had spent in custody.
8. On its part, the Prosecution prayed for a custodial sentence. It pointed out that the victim's family was still bitter about losing their daughter as the Accused person followed her at her parents' home where the incident finally occurred. It was its contention that a custodial sentence would rehabilitate the Accused person.
9. According to the Pre-sentence Report by Benard O. Musitia, Probation Officer, Vihiga County, dated 10<sup>th</sup> June 2024 and filed on 11<sup>th</sup> June 2024, the Accused person was sixty (60) years old. He attended Itegero Primary School but did not proceed to secondary education due to economic difficulties in the family. He later left home for Eldoret where he engaged in casual construction jobs for five (5) years. He returned home thereafter and engaged in small scale farming, brick making and casual jobs.
10. In 2006, he went back to Eldoret where he engaged in casual work. In 2010, he returned home and had been engaging in small scale farming and casual work. He was married to one Mary Anyanya but they separated due to domestic row. He later married the deceased in 2017 but had not brought forth a child. He, however, had two (2) from his previous relationships. He consumed alcohol and smoked cigarette and bhang. He was once a community policing volunteer working with the area chief. He professed Christianity.
11. He admitted having committed the offence and prayed for leniency of court. He pointed out that he had no intention of killing the victim and that in the event that an opportunity would arise he would seek for forgiveness from the victim's family and clan.
12. His family sought for the court's leniency while sentencing him. They were ready to seek reconciliation of the two (2) families. They pointed out that they would support the offender to resettle and partake in his rehabilitation.
13. The victim's family was still bitter about the loss of their daughter. Her brother pointed out that she left behind five (5) children who were in the custody of their fathers save for one who depended on him. They opined that they would be satisfied with any verdict that would be passed by court.
14. The Local Administration and his community reported that the offender had previous criminal record and that he had been sentenced to a prison term initially. They confirmed that his character was wanting and mainly affected by alcohol and drug abuse. They were apprehensive of the safety of the offender if released back to the society.
15. The Probation Officer opined that a non-custodial sentence would not be tenable in view of the findings.



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.
18. The sentence also had to be one that was hinged on retributive justice for the secondary victims. Justice not only needed to be done but it had to be seen to be done.
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 victim's 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.
21. Having considered the facts of this case and the Accused person's mitigation, this court came to the firm conclusion that a sentence of fifteen (15) years would be suitable and adequate herein as he killed the deceased in her father's home after he sneaked in at night and killed her. The multiple stab wounds to her vagina were unforgivable. The nature of the injuries the deceased sustained showed the malice that the Accused person had and showed his intention of killing the deceased. A non-custodial sentence would be unjust.
22. 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).
23. 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).
24. 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.”



25. The requirement under Section 333(2) of the Criminal Procedure Code was restated by the Court of Appeal in *Abamad Abolfathi Mohammed & Another vs Republic* [2018] eKLR.
26. The Accused person was arrested on 14<sup>th</sup> July 2018. Though granted bond, he had never executed the same thus was in custody since his arrest. He was convicted on 29<sup>th</sup> February 2024 and has spent some more days in custody pending the delivery of his sentence. This was a period that therefore ought to be taken into consideration while computing his sentence.

### **DISPOSITION**

27. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to fifteen (15) years imprisonment to run from today. The period he spent in custody from when he was arrested on 14<sup>th</sup> July 2018 until 12<sup>th</sup> June 2024 be and is hereby taken into account in line with Section 333(2) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya) while computing his sentence.
28. Orders accordingly.

DATED and DELIVERED at VIHIGA this 13<sup>th</sup> day of June 2024

**J. KAMAU**

**JUDGE**

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