



**Republic v Onyando (Criminal Case E005 of 2023)
[2024] KEHC 7034 (KLR) (11 June 2024) (Sentence)**

Neutral citation: [2024] KEHC 7034 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE E005 OF 2023**

JN KAMAU, J

JUNE 11, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

DICKSON MUTONYI ONYANDO 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 9th April 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 25th March 2023 at around 1600 hours Dorsila Mwendu (hereinafter referred to as the “deceased”) and her boyfriend, the Accused person herein were at Kima centre when they boarded a motor cycle which was ridden by one Stephen Odawa. They were headed to Ebusiralo
3. An argument ensued between them. The Accused person accused the deceased of having been unfaithful. They alighted at Ebusiralo Chiefs Camp Gate. One Lillian Akoyo Alembi was in her house with Rasto Ayiemba Ogongi when she heard someone screaming for help. They both rushed outside to check what was happening. They found the deceased whom the said Lillian Akoyo Alembu knew lying on the ground, writhing in pain.
4. She saw the deceased bleeding from the left side of the neck. When she asked her what had happened, the deceased told her that the Accused person had stabbed her.
5. Other members of the public joined her. She then sent Rasto Ayiemba to go and call the deceased’s parents as she remained with the deceased. However, the deceased died shortly thereafter.



6. The said Lillian Akoyo Alemba informed the Village Elder and the Area Assistant Chief who came to the scene and in turn called the Police officers from Luanda Police Station who took the deceased's body to Coptic Mission Hospital mortuary. Investigations commenced thereafter.
7. On 26th March 2023, at around 1600 hours, the Accused person surrendered himself at Mbale Police Station. He was later picked by Police Officers from Luanda Police Station.
8. The cause of the deceased's death was determined to have been internal bleeding secondary to stab wound following assault. The Postmortem Report dated 29th March 2023 was produced as evidence in this court and marked as Exhibit 1.
9. Having entered into a Plea Agreement, the State urged this court to sentence the Accused person to ten (10) years imprisonment while the Accused person sought for five (5) years imprisonment.
10. In his mitigation, the Accused person conceded that the court could rely on some of the findings of the Pre-Sentence Report regarding his demeanour but categorically denied that he had been threatening the deceased's family as he had been in jail. He asserted that if indeed he had threatened them, they ought to have reported the matter to the Police and obtained an OB.
11. He was saddened and regretted that he found himself in the circumstances that he did. He asserted that he was hardworking and earned a living and took care of his family through his carpentry trade that he learnt through apprenticeship.
12. He pointed out that although he had proposed that he be sentenced to five (5) years in prison while the Prosecution had suggested ten (10) years imprisonment, he urged this court to mete upon him a non-custodial sentence.
13. On its part, the Prosecution noted that the deceased's family had lived in fear and was fearful of coming to court having been traumatised by the incident and the threats that they kept on receiving.
14. It asked this court to consider the time the Accused person and the deceased had lived together and the gravity of the offence. It was emphatic that although the Accused person and the deceased had issues, he ought to have resolved the issues in a better way.
15. It also requested this court to note that the Accused person's family and the Community did not want him given a non-custodial sentence and that for his own safety, it urged this court to impose on him a custodial sentence.
16. According to the Pre-Sentence Report of Fanny Masinde, Probation Officer, Vihiga County that was dated 6th June 2024 and filed on 7th June 2024, the Accused person was twenty-seven (27) years old. He attended Ebusiraro Primary School. He dropped out of school after his examination for Kenya Certificate of Primary Education (KCPE). He later joined apprenticeship in carpentry. He stayed with the deceased for nine (9) months as a couple prior to the offence and was doing carpentry as a source of livelihood. He drank alcohol and smoked bhang.
17. According to him, his marriage was marked with unfaithfulness as he always suspected the deceased of infidelity. He pointed out that the deceased could steal money from him and spend the night away from home in unknown places. He was saddened to be associated with the death of the deceased as he stated that he did not intend to kill her. He was remorseful. He prayed for leniency of court. He sought for a non-custodial sentence and pointed out that he was ready to abide by its terms and conditions.
18. His family observed that he had no home to go to upon release as all houses in the home were demolished after the commission of the offence. Her mother reported that she could not house him



in Nakuru as she was staying in her employer's house. His family could not guarantee his safety as the home environment was still hostile and that he would possibly be killed if released. They felt he was safer being imprisoned.

19. The deceased's family was bitter about losing their child. They pointed out that she was useful and brought blessings to her family. They reported that she left behind a child one Jane Sota who was two (2) years old and was traumatised about the loss of her mother. They pointed out that they had received threats from the Accused person while he was in prison to the effect that once released, he would inflict harm on them. They were therefore opposed to him being released on a non-custodial sentence.
20. The Local Administration viewed him as a troublesome person. The Chief reported that the community was very hostile towards him and that they razed down all houses in his homestead and sold all their cows after the incident. He averred that the Accused person and the deceased were cohabiting and would often drink alcohol and smoke bhang together.
21. He was apprehensive that the communities of the Accused person and that of the deceased were still hostile towards each other due to the tragic incident and that his release would bring further animosity between the two (2) communities. He also opined that the offender would be safe in prison as he would be killed if released.
22. The Probation Officer opined that in view of the circumstances, the Accused person herein did not qualify for a non-custodial sentence or consideration for Probation.
23. 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.
24. 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.
25. 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.
26. Killing someone is an abomination in the society and that explains why the Accused person's family, the deceased's family's and community did not want him released on a non-custodial sentence. They in fact felt that it was safer that he be given a non-custodial sentence as his safety could not be guaranteed. His house had in fact been demolished, a sign of the community's wrath against him. Justice not only needed to be done but it had to be seen to be done.
27. 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. His version to the Probation Officer that the deceased fell on a knife as they were struggling could not have been further from the truth. The deceased must have died a harrowing death as the Accused person stabbed her on the neck, which was evident from the Postmortem Report which showed that she died as a result of a stab wound following assault.



28. From the facts that were given in the Pre-Sentence Report, the Accused person killed the deceased who was cohabiting with him. The facts of the case pointed to lack of anger management on his part.
29. 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 ten (10) 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.
30. 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).
31. 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).
32. 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.”
33. The requirement under Section 333(2) of the [Criminal Procedure Code](#) was restated by the Court of Appeal in [Ahmad Abolfathi Mohammed & Another vs Republic](#) [2018] eKLR.
34. The Accused person was arrested on 26th March 2023. His application for bond was denied due to a negative Pre-Bail Report. Thus, he had been in custody since his arrest. This was a period that therefore ought to be taken into consideration while computing his sentence.

Disposition

35. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to ten (10) years imprisonment to run from the date of this Sentence.
36. For the avoidance of doubt, the period from when he was arrested on 26th March 2023 to 10th June 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).
37. Orders accordingly.

DATED AND DELIVERED AT VIHIGA THIS 11TH DAY OF JUNE 2024.



J. KAMAU
JUDGE

