



**Republic v Ndeda (Criminal Case 4 of 2023) [2024] KEHC 8345 (KLR) (3 July 2024) (Sentence)**

Neutral citation: [2024] KEHC 8345 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL CASE 4 OF 2023**

**JN KAMAU, J**

**JULY 3, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**FRANCIS NDEDA ..... 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 2<sup>nd</sup> July 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 24<sup>th</sup> March 2020, the Accused person was at Jebrock Market Kapchemugumu Sub-location, Jepkoyai Location in Hamisi Sub- County within Vihiga County when Oscar Alumasa (deceased) picked a quarrel with him over a sweater. They failed to reach an agreement and the Accused person left and walked towards Hamisi. The deceased followed him while riding his Motor Cycle.
3. They fought and the deceased ran towards the Boda Boda Stage bleeding profusely. He was assisted by his colleagues who rushed him to Jaramogi Oginga Odinga Teaching and Referral Hospital (JOOTRH). He succumbed to his injuries while undergoing treatment.
4. The Pathologist formed an opinion that the cause of his death was a severe head injury and penetrating chest injury with massive haemothorax due to assault. The Postmortem Report dated 26<sup>th</sup> March 2020 was produced as evidence in this court and marked as Exhibit 1. The murder weapon was never recovered.
5. The Accused person surrendered himself at Tambua Patrol Base from where he was escorted to Serem police Station. After the investigations were completed, he was charged with the offence of murder.



6. Having entered into a Plea Agreement, the State urged this court to sentence him to ten (10) years imprisonment while he sought that he be given three (3) years imprisonment.
7. In his mitigation, he told this court that he was aged thirty four (34) years and was married with one (1) child. He averred that from the facts of the case and the Pre-sentence Report, it was clear that the deceased's death was not deliberate and that the same emanated from a fight between them.
8. He pointed out that although the deceased died as a result of the injuries that he sustained on that day, he also suffered an eye injury that was still painful to date.
9. He said that he was very sorry for having committed the offence and asked this court to consider that the Pre-Sentence Report was positive and mete upon him a Probation sentence of three (3) years as the said Pre-Sentence Report had recommended.
10. On its part, the State urged this court to consider that the deceased's family was still bitter following his loss, that the deceased was young, aged twenty eight (28) years and did causal jobs and supported them, the nature of the injuries that the deceased sustained, the Sentencing objectives that justice not only needed to be done but that the same had to be seen to be done and mete upon the Accused person a custodial sentence.
11. The Pre-Sentence Report of J. Sahani, Probation Officer, Vihiga County that was dated 1<sup>st</sup> March 2024 and filed on 5<sup>th</sup> March 2024 did not give the Accused person's age. However, it confirmed that the Accused person was married with one (1) child and that he dropped out of school after sitting for his Kenya Certificate of Primary Education (KCPE) due to financial constraints. He engaged in causal work and was the breadwinner of his family. He did not present with any drug or substance abuse.
12. According to the said Pre-Sentence Report, both the Accused person and the deceased had a physical confrontation on two (2) occasions within a span of a month. In the first incident, the deceased and his two (2) friends attacked the Accused person on his way home from Jebrock Market and they took his sweater. He then ran away.
13. After about three (3) weeks at Jebrock Market, the deceased tried to run over the Accused person with his Motor Cycle but the Accused person dodged. The deceased then removed a knife to stab the Accused person but the Accused person grabbed it and stabbed him. The Accused person then surrendered at Tambua Police Post.
14. The Pre-Sentence Report attributed the confrontation to provocation by the deceased. The Accused persons' immediate and extended families, neighbours and Local Administration corroborated the circumstances of the incident as he had narrated.
15. The Local Administration said that the Accused person was calm and co-existed well with the community. Several neighbours spoke positively of him. The Local Administration was emphatic that it was the deceased who intended to kill the Accused person. It added that the deceased was not in good terms with his parents and would issue them death threats.
16. The Local Administration and the neighbours and the Accused person's family therefore urged this court to mete against him a lenient sentence. The Pre-Sentence Report recommended that the court sentence him to three (3) years' Probation sentence.
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 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.
19. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of their 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.
20. Notably, at the time of mitigation, counsel for the State pointed out that the deceased's family was in attendance in court at the time the Accused person was entering into the Plea Bargain Agreement and had denied having been interviewed by the Probation Office. This put the court at a quagmire as the Pre-Sentence Report had indicated that the deceased's parents had not been shocked by the incident because the deceased's conduct was not good as he used to threaten them with harm or death.
21. Be that as it may, killing someone irrespective of their character was an abomination. No one was allowed to take the law into their own hands. Justice not only needed to be done but it had to be seen.
22. It was evident from the circumstances that were given in the Pre-Sentence Report that it was the deceased who confronted the Accused person on both occasions, a fact that was corroborated by the neighbours and Local Administration. It was apparent that the incident was an affray that led to the death of one party, in this case, the deceased herein.
23. The deceased must have died a harrowing death as he suffered a severe head injury and penetrating chest injury. On the other hand, the Accused person sustained an injury to the left eye as a result of the physical confrontation.
24. Be that as it may, the circumstances pointed to the Accused person having used excessive force against the deceased. He stabbed him twice leading to his death. A life was lost needlessly but the same was contributed to by the deceased himself as he followed the Accused person. This court therefore had to cut a balance to do justice in view of the circumstances of the matter.
25. Notably, the Accused person was arrested on 24<sup>th</sup> March 2020. He was arraigned in court on 2<sup>nd</sup> April 2020. It was not clear from the court file why he was not arraigned in court within the period that has been specified in the law. However, that was not an issue that was before this court. What was pertinent herein was that he remained in custody from 24<sup>th</sup> March 2020 until 15<sup>th</sup> December 2021 when his bond was processed. He thus stayed in custody for one (1) year eight (8) months and eighteen (18) days.
26. This court took the view that the period between 24<sup>th</sup> March 2020 and 15<sup>th</sup> December 2021 that the Accused person spent could be deemed to have been some form of punishment to deter him from committing a similar offence. It could also be deemed to have been a small part of retribution for the deceased's family as he remained behind bars for the aforesaid period.
27. Given the circumstances of the case herein, this court took the view that the maximum period it would have been persuaded to mete against the Accused person would have been three (3) years' imprisonment. However, bearing in mind the remission and the period that he spent in custody as envisaged in Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya), he would ideally be in prison for about four (4) months which would not be sufficient time for him to have learnt how to manage his anger.



28. Accordingly, having considered the facts of this case, his mitigation, the State's response thereto, the Pre-Sentence Report and bearing in mind that sentencing was the sole discretion of the court and the fact that he was remorseful for having committed the offence, he was a first offender and was defending himself at the material time, this court came to the firm conclusion that a non-custodial sentence of three (3) years would be suitable and adequate punishment as this unfortunate incident would not have occurred had the deceased not attacked him. A Probation sentence of three (3) years would in the mind of this court be a sufficient period for him to learn how to manage his anger.
29. This court was further persuaded to consider a less stiff sentence as he surrendered himself to the police immediately after the incident. In addition, the Pre-Sentence Report showed that the community had absolved him from the offence and did not excommunicate him from the community which meant that he would be reintegrated well as he served his Probation Sentence.

### **DISPOSITION**

30. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to Probation Sentence of three (3) years to run from the date of this Sentence.
31. It is hereby directed that the Accused person be and is hereby released from custody forthwith unless he be held for any other lawful cause to commence his Probation sentence forthwith.
32. Orders accordingly.

DATED AND DELIVERED AT VIHIGA THIS 3<sup>RD</sup> DAY OF JULY 2024

**J. KAMAU**

**JUDGE**

