



**Republic v Luvai (Criminal Case E001 of 2023)
[2023] KEHC 21179 (KLR) (20 July 2023) (Sentence)**

Neutral citation: [2023] KEHC 21179 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE E001 OF 2023**

**JN KAMAU, J
JULY 20, 2023**

BETWEEN

REPUBLIC STATE

AND

PATRICK IFATSWA LUVAI ACCUSED

SENTENCE

1. The Accused person was initially charged with the offence 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 June 20, 2023 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 January 24, 2023 at around 1510hours, the Accused person was with the deceased, Alfred Jumba and Vincent Memba at the compound when the Accused person, who was a brother to the deceased started fighting. They were drunk.
3. The Accused person overpowered the deceased who had fallen on the ground. The Accused person started kicking the deceased and stomped him on the chest. Vincent Memba tried to separate the two (2) but the Accused person was still determined to continue with the fight. Vincent Memba called Evans, their older brother who managed to restrain the Accused person. Evans was informed that the cause of the fight was that the deceased had stolen the Accused person's electric wire and that since it was not a one (1) time offence, he was teaching him a lesson.
4. Later that evening, the deceased staggered home in pain and died in his house at 7.00pm. The Chief was informed of the incident and he came and arrested the Accused person. The deceased's body was taken to the Mortuary where a Postmortem Report was done on January 28, 2023. The Report indicated that the deceased died due to intra-abdominal haemorrhage due to trauma from a blunt object.
5. After the investigations were completed, the Accused was charged with the offence that is before court.



6. 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.
7. There are times the sentence meted to an accused person is intended to deter him from committing such an offence in future. This court took the view that a deterrent sentence would be a consideration in the circumstances of this case as he the Accused person had previously assaulted and/or threatened other persons with knives. In this regard, protecting the community from his action was also an objective that this court considered while sentencing him.
8. It was also the considered view of this court that the sentence herein had to be one that was hinged on retributive justice for the secondary victims and to communicate the community's condemnation of his criminal conduct. The sentence would indirectly send a strong signal to deter other would be offenders from committing such an offence.
9. 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. Indeed, the family and community must see that justice was not only done but that the same seemed to have been done failing which he could also be harmed.
10. The Prosecution has asked that he be treated as a first time offender. They urged the court to sentence him to two (2) years. The State recommended a sentence of eight (8) years.
11. According to the facts of the case, both the Accused person and the deceased were said to have been drunk at the time of the incident. This differs from what the Pre-Sentence Report dated July 17, 2023 and filed on June 18, 2023 (sic). The said Pre-Sentence Report indicated that after the Accused person and the deceased fought, the deceased went to drink and when he came back and went to sleep. When his children went to take supper to him, at 7.30pm they found him dead. Nonetheless, there was a convergence in the facts that the deceased returned to his house and died later that day in early evening.
12. There is nothing to show that the deceased may have ingested anything that could have caused his death. The Postmortem Report that was tendered in evidence and marked as Exhibit 1 showed that the Postmortem examination revealed that the deceased died due to intra-abdominal haemorrhage due to trauma from a blunt object.
13. In his mitigation, the Accused person stated that he was a first offender, that he was remorseful and that he was drunk at the material time which impaired his reasoning. He thus asked to be given a second chance. On the other hand, when he was being interviewed for the said Pre-Sentence Report showed, the Probation Officer formed the opinion that the Accused person did not appear bothered by his criminality and owed no one an apology. He was said to be unmoved by the legal pressure (sic).
14. The family of victim and community said the Accused person was problematic and were still bitter and his home was demolished. He was now an outcast. The Probation officer was emphatic that the Accused person was not suitable to be considered for a non – custodial sentence.
15. Having considered the fact that the Accused person entered a Plea Bargaining Agreement that saved the court judicial time, the facts of this case, his mental status at the material time, his mitigation, the fact that he was a first offender, the Pre-Sentence Report vis a vis his attitude towards the offence that he



committed, this court finds and holds that the Accused person was not fit to be given a non-custodial sentence.

16. Accordingly, the Accused person be and is hereby sentenced to serve eight (8) years imprisonment which will run from today. It is hereby directed that the period that he spent in custody from January 24, 2023 being the date of arrest to July 19, 2023 be and is hereby taken into account at the time of computation of his sentence in accordance with Section 333(2) of the [Criminal Procedure Code](#).

17. Orders accordingly.

DATED AND DELIVERED AT VIHIGA THIS 20TH DAY OF JULY 2023.

J. KAMAU

JUDGE

