



**Republic v Musigoye (Criminal Case 26 of 2021)
[2023] KEHC 22899 (KLR) (20 September 2023) (Sentence)**

Neutral citation: [2023] KEHC 22899 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE 26 OF 2021
JN KAMAU, J
SEPTEMBER 20, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

ALVINE MUSIGOYE 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 July 10, 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 were that the February 19, 2021 at about 1900hours in Makanyi village, Julius Milima (the deceased) arrived home while appearing drunk. His wife, Millicent Mataga, was preparing supper and she informed him that the children were at the neighbours (sic). The deceased entered his house and proceeded to bed to rest awaiting supper. The deceased slept until 2100hours when his wife sent their son, Bravin Muhederi to assist in bringing the food into the house. Bravin heard the back door open. He then heard the deceased and his elder brother, the Accused person herein, arguing. They were arguing about the Accused person not working and wanting food but he insisted that he had worked in the farm.
3. Millicent and Brian walked out in order to see and found the Accused person hitting the deceased with a wooden stick. The deceased fell down and the fight stopped. The Accused person ran away and the two (2) brought the deceased to the house. They administered first aid and rested till morning.
4. On February 20, 2021, the deceased was in a bad condition and was taken to Tiriki clinic where he underwent treatment upto 1900hours when he passed away.



5. On February 21, 2021, the matter was reported to Cheptulu Police Station and the body was moved to Jumuiya mortuary. The police also visited the scene of the crime.
6. The Accused person was spotted at Kamulembe Centre where the Area Chief arrested him and escorted him to Muhudu Patrol base. He was later transferred to be charged with the offence of murder.
7. A Postmortem was conducted at Jumuia Hospital on February 25, 2021 and the cause of the death was established as Xephisanx secondary to head injury.
8. Having entered into a Plea Agreement, the Accused person urged this court to sentence him to two (2) years imprisonment. On its part, the State recommended a sentence of five (5) years imprisonment.
9. In his mitigation, he asked this court to rely on the Pre-Sentence Report of Bernard Mwembe, Probation Officer, Vihiga County that was dated and filed on September 19, 2023 but to give a custodial sentence from the date of his arrest and the same to be calculated from the date of his remand (sic). On its part, the Prosecution left the decision of the sentence to be imposed on the court.
10. According to the aforesaid Pre-Sentence Report, the Accused person's family had enjoyed a crime free record and were socially acceptable in the society. The Accused person was aged twenty-four (24) years. He was first arrested while he was in Class Seven (7). He stopped smoking bhang as it was making him lazy and overbearing. Although he was a first offender, he had a long list of previous unreported felonies.
11. Although his siblings and paternal aunt would have wished to welcome him home, they were against him being released on a non-custodial sentence as they were aware that the community was still very hostile to him. Their mother who the community accused of also having killed the deceased actually fled from the area. The Accused person was said to have once beaten his paternal uncle to a pulp and even tried to cut him with a panga. He was said to have been ill-mannered and bad tempered.
12. His clan elders were also against him being released on a non-custodial sentence as he was a treacherous boy who scared them. Traditional rites and reconciliatory meetings were under way to pave way for his reintegration and that of his mother.
13. The community believed that he and his mother killed the deceased. The local administration established that the Accused person intervened in the fight between his mother and the deceased and that it was him who hit the father with a jembe and injured him. The local administration blamed his mother for having been a bad influence on him.
14. The Pre-Sentence Report indicated that although the Accused person had strong social links, he had previously had interpersonal problems both within his immediate and other relatives which all led to him being secluded from the extended family. The Probation Office found him not to have been suitable for a non-custodial sentence.
15. 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.
16. This court noted that although the facts the Accused person admitted to during the recording of the Plea Agreement were different from those in the Pre-Sentence Report, it appeared from the said Pre-



- Sentence Report that he hit the deceased who was his father when he intervened in a fight between him and his mother, a fact that the local administration had established.
17. He appeared to have been a very aggressive person and was at loggerheads with his immediate and other relatives. While he supported his mother in a dispute with his father, his action of hitting the deceased with a jembe was too extreme. He ought to have exercised greater restraint. It was therefore it was necessary that any punishment that was meted to him deter him from similar reactions and/or actions in future.
 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.
 19. The sentence also had to one that was hinged on retributive justice for the secondary victims. The deceased was the Accused person's father. Killing of one's parent is an abomination in the society. Justice not only needed to be done but it had to be seen to be done.
 20. 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.
 21. Although the Accused person had never been charged with any offence previously prior to the incident and that he was a first offender and remorseful, this court agreed with the recommendation in the Pre-Sentence Report that a non-custodial sentence was not suitable herein as the community was still very hostile against him.
 22. Having considered the facts of this case and the Accused person's mitigation, this court to the firm conclusion that a sentence of five (5) years would be suitable and adequate herein.
 23. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to five (5) years imprisonment to run from today. The period he spent from when he was first arraigned in court on March 4, 2021 until September 24, 2023 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.
 24. Orders accordingly.

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

J. KAMAU

JUDGE

