



**Republic v Sula alias Poela (Criminal Case E011 of 2022)
[2023] KEHC 22925 (KLR) (20 September 2023) (Sentence)**

Neutral citation: [2023] KEHC 22925 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE E011 OF 2022
JN KAMAU, J
SEPTEMBER 20, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

ROBERT ASENKA SULA ALIAS POELA 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 July 27, 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 the Accused person had a difference with his wife, Sheila Luseka. She left and went to stay with her elder sister Josephine Muere (the deceased herein). On the April 23, 2022, the Accused person visited the salon where his wife was working but he did not find her. At the time, he was armed with a knife and looked drunk.
3. He proceeded to tell one Nancy at the salon that he was planning to kill his wife and her child. Nancy called his wife and informed her of the said information.
4. The Accused person then proceeded to the deceased's home where his wife was living. A confrontation ensued. He stabbed the deceased on the chest and fled away. The wife who was present took the deceased to the hospital where she passed away.
5. A postmortem was carried out on April 27, 2022 where the cause of death was established as a stab wound leading to a perforation on the right artery following assault.
6. On November 11, 2022, the Area Chief was informed of the whereabouts of the Accused person. Together with the Village Elder, he arrested the Accused person on November 12, 2022 at Makuchi



area. He was escorted to Serem police station from where he was brought to court and charged with the offence herein.

7. Having entered into a Plea Agreement, the Accused person urged this court to sentence him to ten (10) years imprisonment. On its part, the State recommended a sentence of fifteen (15) years imprisonment.
8. In his mitigation, he told this court that he was remorseful and asked this court to be lenient on him. He also urged this court to consider the period from the time of his arrest.
9. According to the Pre-Sentence Report of Bernard Mwembe, Probation Officer, Vihiga County Office that was dated and filed on September 20, 2023, the Accused person was born in 1988. He dropped out of school due to financial constraints. He returned from Nairobi where he had been working as his father who was a drunkard was not providing for him. He was working as a hired farm hand as at the time of the incident herein. He was an alcoholic and smoked bhang and cigarettes. He was also said to sell bhang and alcohol.
10. He had children from different women. His first wife left him after he was arrested for the offence of gang rape. He had also been arrested three (3) times for stealing offences and was also involved in manufacture of fake currency. His paternal grandmother was blamed for having spoilt him by pampering and excusing him from his indiscretions.
11. No one visited him while he was in custody. His family believed that he was safer in prison. The deceased's father and her husband were bitter as the Accused person killed the deceased without any provocation. The community was still bitter as he was troublesome with a likelihood of being killed if he was released on a non-custodial sentence. He was said to have been sending threatening messages while he was in hiding after committing the offence.
12. The Pre-Sentence Report indicated that he had weak social links and that the home environment was not conducive for his release on a non-custodial sentence.
13. 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.
14. The Accused person appeared to have had a criminal history. While he was offended that his wife had escaped and gone to her sister's house, his action of stabbing the deceased when she sought to restrain him from beating his wife was too extreme. He ought to have exercised greater restraint. It was therefore necessary that any punishment that was meted to him deter him from similar reactions and/or actions in future.
15. 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
16. The sentence also had to be one that was hinged on retributive justice for the secondary victims. The deceased was killed without any provocation. She was merely trying to stop her sister from being beaten. She helped her sister and ended up paying the price of death leaving her father, husband and children. Justice not only needed to be done but it had to be seen to be done.



17. 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.
18. This court noted that from the aforesaid Pre-Sentence Report although the Accused person was ashamed of his actions, which were a wake up call and that he had apologised and sought forgiveness from the deceased's family and that from his mitigation, he was 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.
19. Having considered the facts of this case and the Accused person's mitigation, this court to the firm conclusion that a sentence of ten (10) years would be suitable and adequate herein.
20. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to ten (10) years imprisonment to run from today. The period he spent from when he was first arraigned in court on November 22, 2022 to 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.
21. Orders accordingly.

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

J. KAMAU

JUDGE

