



**Director of Public Prosecution v Magokha (Criminal Case E016 of 2022)  
[2024] KEHC 13412 (KLR) (5 November 2024) (Sentence)**

Neutral citation: [2024] KEHC 13412 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE E016 OF 2022  
S MBUNGI, J  
NOVEMBER 5, 2024**

**BETWEEN**

**DIRECTOR OF PUBLIC PROSECUTION ..... REPUBLIC**

**AND**

**SIMON WAWIRE MAGOKHA ..... ACCUSED**

**SENTENCE**

1. The accused was initially charged with Murder contrary to Section 203 as read with 204 of the [Penal Code](#). The particulars were that on 4<sup>th</sup> May, 2022 at Lower Mwiba 'A' village, Mwiba sub-location, Sinoko location, Likuyani sub-county within Kakamega County, he murdered Timothy Akhwanga Mudenyo.
2. When accused was arraigned in court on 19<sup>th</sup> May, 2022 he pleaded not guilty to the charge.
3. Subsequently, on 22<sup>nd</sup> February, 2024, the defence sought to engage in a plea bargaining agreement. The prosecution consented to the plea bargain and the parties entered into a plea bargaining agreement pursuant to the provisions of Section 137A to 137E of the [Criminal Procedure Code](#) (CPC), duly signed by the Prosecution and defence counsel on the 22<sup>nd</sup> February, 2024.
4. On 16<sup>th</sup> May, 2024 the court examined the accused in accordance with Section 137F of the Criminal Procedure Code and established that the plea bargain was unequivocal and was entered into voluntarily, as provided for under section 137G. It then accepted the plea agreement.
5. Thereafter the charges were reduced to Manslaughter, contrary to section 202 as read with section 205 of the [Penal Code](#). The elements of the charge were then read out to the accused who pleaded guilty and subsequently admitted the facts as set out in the plea bargain agreement. He was then convicted on his own plea of guilty. The prosecution produced treatment notes and the autopsy report as PEXH1 and PEXH2 respectively.



6. In mitigation, the State Counsel submitted in mitigation that a life was lost, and that custodial sentence should be meted to the accused person, given the gravity of the charge.
7. The defence counsel, Ms. Mburu, in her submissions in mitigation, pleaded for leniency and stated that the accused is a first time offender who is remorseful and regrets killing the victim who was his friend.
8. A presentence report was duly filed in court on 7<sup>th</sup> October, 2024. According to the report, the accused person is the fourth child in a family of six siblings who are adults living independently. The family members prayed for leniency as the accused person was the breadwinner in a young family and a first time offender. There is no history of crime or violence in the family. The accused person was schooled to Secondary school and had one wife with whom they had seven children. The accused has had a problem with alcohol overtime.
9. From the report, the accused person is remorseful and attributes his actions to impaired judgment. The presentencing report also states that the victim’s family expressed bitterness regarding the loss of their kin who was a husband, father and breadwinner in a young family of four children. They sought for justice from the court at sentencing.
10. The Supreme Court in *Francis Karioko Muruatetu & another v Republic*, Petition No 15 of 2015, as a guide in sentencing held that:
  - “...the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:
    - a. age of the offender
    - b. being a first offender;
    - c. whether the offender pleaded guilty;
    - d. character and record of the offender;
    - e. commission of the offence in response to gender-based violence;
    - f. remorsefulness of the offender;
    - g. the possibility of reform and social re-adaptation of the offender;
    - h. any other factor that the Court considers relevant.”
11. In *Dahir Hussein v Republic* Criminal Appeal No 1 of 2015; [2015] eKLR, the High Court held that the objectives of sentencing include: “deterrence, rehabilitation, accountability for one’s actions, society protection, retribution and denouncing the conduct by the offender on the harm done to the victim.”
12. The 2016 *Judiciary of Kenya Sentencing Policy Guidelines* lists the objectives of sentencing at page 15, paragraph 4.1 as follows:
  - “Sentences are imposed to meet the following objectives:
    1. Retribution: To punish the offender for his/her criminal conduct in a just manner.



2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
  3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
  4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
  5. Community protection: To protect the community by incapacitating the offender.
  6. Denunciation: To communicate the community's condemnation of the criminal conduct."
13. I have considered the circumstances of the case, the submissions by the prosecution Counsel and the mitigation by the defence counsel.
  14. According to the facts of the case, on 4<sup>th</sup> May, 2022 the accused and deceased person were drinking at a pub at 1700hours. They left the pub to discuss some issues and proceeded to the house of the accused. Witnesses heard commotion in the accused person's house and found the accused person beating the deceased who was lying on the floor bleeding with a piece of timber. The deceased was escorted to Cherangany Nursing Home within Trans Nzoia County where he succumbed to the injuries while undergoing treatment.
  15. According to the post mortem report the deceased died as a result of severe head injury which caused extensive intracranial hemorrhage due to multiple blunt force traumas to the head consistent with physical assault.
  16. Under section 205 of the Penal Code, manslaughter is punishable by a maximum sentence of life in prison. This is, however, the maximum penalty that is normally reserved for the most serious of such situations. This does not, in my opinion, fall into the category of the most heinous examples of manslaughter. The state and defence counsel have stated that the accused is a first-time offender. As a result, I've ruled out life imprisonment.
  17. The discretion in sentencing rests with the trial judge because he or she has the knowledge of the relevant facts before him or her and in many instances, has observed the accused and witnesses' demeanor. The discretion must however be exercised judiciously. In the Nigerian case of *African Continents Bank v Nuamani* [1991] NWLI (parti86)486, it was observed that,  
  
"The exercise of court's discretion is said to be judicial if the judge invokes the power in his capacity as a judge qua law. An exercise of discretionary power will be said to be judicial, if the power is exercised in accordance with the enabling statutes, discretionary power is said to be judicious if it arises or conveys the intellectual wisdom or prudent intellectual capacity of the judge. The exercise must be based on a sound and sensible judgment with a view to doing justice to the parties."



18. I was not the trial court, but I have perused the proceedings. I am properly sized of the facts in the matter.
19. have taken into account the mitigating factors that the accused person is a first time offender and a breadwinner in his family. I also note that the accused person is remorseful and willingly pleaded guilty to the charge. I also take note of the fact that both the accused and deceased person had been drinking together on the day of the offence, and were possibly intoxicated with alcohol at the time of the offence. However, what is disturbing is the fact that the accused knowingly locked the deceased in his house and beat him with a piece of timber until he fell down and continued beating the deceased until he was rescued by neighbors. This clearly shows intent to cause grievous harm to the deceased on the part of the accused person.
20. I also take note of the fact that members of the victim's family, including the wife who lost a breadwinner and father to her children and the elder brothers of the deceased are still bitter for the uncalled loss of one of their own.
21. In the circumstances of this case, I find a non-custodial sentence as sought by the accused's counsel is inappropriate. A life was lost. The accused person ought to feel the consequences of his actions.
22. In view of all the circumstances of the case, I hereby sentence the accused person to a custodial sentence of ten (10) years.

**Final Orders:**

1. Accused to serve 10 years imprisonment.
2. Period served in remand to be computed in the sentence as per the provision of Section 333(2) of the Criminal Procedure Code.
3. Right of appeal 14 days.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 5<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**S.N MBUNGI**

**JUDGE**

In the presence of :

Accused – present

Ms. Mburu Advocate for the accused – present online

Court Prosecutor – Mbonzo present online

Court Assistant – Elizabeth Ang'onga

