



**Republic v Olubwayo & another (Criminal Case 14 of 2016)
[2024] KEHC 15788 (KLR) (16 December 2024) (Sentence)**

Neutral citation: [2024] KEHC 15788 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 14 OF 2016
AC BETT, J
DECEMBER 16, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

COLLINS MBAYI OLUBWAYO 1ST ACCUSED

JACKSON MASINDE OUMKHOLI 2ND ACCUSED

SENTENCE

1. The Accused Collins Mbayi Abwao was convicted of the offence of murder contrary to Section 202 as read with Section 205 of the [Penal Code](#) in a Judgement delivered by Hon. P. J. O. Otieno J, after he had been transferred to another station.
2. The file was remitted to me for purposes of sentencing in accordance with Section 200 of the [Criminal Procedure Code](#).
3. Prior to sentencing, I called for a pre-sentence report which was filed on 20th November 2024. According to the said report, the Accused struck the deceased, who was his father with a piece of wood during a quarrel as to why he had not finished the task of tiling the land assigned to him by the deceased.
4. The Pre-sentence report indicates that the victim's family which is equally the Accused's family is non-committal as to whether the Accused should be considered for a non-custodial sentence. The Accused was seen as a hardworking and obedient individual with no prior history of criminal activity.
5. The community described the Accused as a quiet and law-abiding citizen who had some episodes of mental instability that was managed. The local administration cautions against a non-custodial sentence. Though they are not opposed to the Accused being given a non-custodial sentence, they call for caution because of the lingering bitterness in the family.



6. In mitigation, the Accused who said that he is the eldest son of the family expressed deep regret. He is 34 years old, a first offender and at the prime of his age. The Accused expressed remorse over the death of his father. He states that it was unintentional. The Accused also says that having been in custody since 2016, he has learnt his lesson and pleads for a non-custodial sentence stating that the family is ready to reintegrate him.
7. The Prosecution urged the court to impose a custodial sentence noting that the family was said to be still bitter and the Accused's release on a non-custodial sentence may trigger a revenge from members of the family.
8. I have carefully considered the pre-sentence report, the Accused's mitigation and the Submissions by the State.
9. The Objectives of sentencing are set out in the [Judiciary Sentencing Policy Guidelines](#) and are aimed at achieving *inter alia*:
 - retribution, deterrence, rehabilitation, restoration and denouncing the offence, on behalf of the community.
10. I note that the deceased died from one blow to the head. The injury was caused by a piece of wood which is a mitigating factor herein as the Accused could have as well used a jembe since he was tilling the land at the time he got into the quarrel with the deceased.
11. Taking into account the entire circumstances, I find that this is an appropriate case for a deterrent sentence. The Accused and other members of the public ought to learn that one should not resort to violence in order to resolve disputes. A custodial sentence is therefore necessary. I hereby sentence the Accused to thirteen (13) years imprisonment. The Accused was arrested on 29th February 2016. He has been in custody since then. I hereby direct that the 13 year sentence be deemed to have begun to run from the said date of the Accused's arrest. This is in view of the provisions of Section 333(2) of the [Criminal Procedure Code](#) that obligates the courts to take into account the time already spent in custody during the period of the trial. The Accused has a right to appeal against the conviction and sentence within fourteen (14) days.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 16TH DAY OF DECEMBER 2024.

A. C. BETT

JUDGE

In the presence of:-

Ms. Chala for the Prosecution

No appearance for K'Ombwayo for the Accused

Court Assistant: Polycap

