



**Republic v Kikwai (Criminal Case 4 of 2019)
[2025] KEHC 14173 (KLR) (9 October 2025) (Sentence)**

Neutral citation: [2025] KEHC 14173 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CRIMINAL CASE 4 OF 2019
CM KARIUKI, J
OCTOBER 9, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

PAUL KIKWAI ACCUSED

SENTENCE

1. The accused was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. After a full hearing of the case, the court found him guilty of the lesser offence of manslaughter and convicted him accordingly. The prosecution informed the court that he had no previous record and could therefore be treated as a first offender.
2. In mitigation, her Advocate submitted that his client is repentant, remorseful, and regrets the incident that killed his friend. He is a family man with a wife and children, and was their sole breadwinner. This family situation was a significant factor in the court's decision. The accused has been in custody for 6 years (since 2019) to date. He also cites the pre-sentence probation report, which was positive on his being awarded a non-custodial sentence. That reconciliation has been initiated by the families (both the victim and the accused); thus, it would be in the interest of justice for him to serve his non-custodial sentence. The report dated August 15, 2015, confirms the state of the history and background. It states that he is now 41 years old this year. That he has no previous record. The two families, though, are from the same place and are living in harmony, save that certain members of the victims' families are opposed to a non-custodial sentence. Thus, reports recommend a delay in the release of the accused for a while.
3. The circumstances of the killing of the victim were that a quarrel ensued between the two as they took local brew, constraining the accused to leave the venue of the brew and start heading home. However, the victim followed him and initiated a brawl, which ended with the accused striking the victim with a jembe, which inflicted injuries that the victim succumbed to in the hospital. There was



no premeditation, and the incident occurred while the combatants were inebriated, having taken local brew.

4. The court found it fit to reduce the charge from murder to manslaughter due to the mitigating circumstances negating premeditation.
5. The court must consider the principles and factors that determine sentences in criminal cases. When determining a criminal sentence, courts consider core principles of justice and a range of specific factors related to the offense and the offender
6. The process aims to balance the purposes of punishment with the specific circumstances of each case.

Principles of sentencing

8. The following core principles guide the sentencing process in many jurisdictions:

Proportionality: The sentence must be fair and appropriate in relation to the seriousness of the crime. This ensures that the punishment "fits the crime" and its gravity.

Parsimony: The court should impose a sentence no more severe than is necessary to achieve the goals of sentencing. Prison, for example, is often considered a last resort.

Parity and uniformity: Similar sentences should be imposed for similar offenses committed by offenders in similar circumstances. This ensures fairness and equality before the law, though it does not prevent different sentences for co-offenders with different levels of culpability.

Totality: When an offender is sentenced for multiple offenses, the total sentence must be just and appropriate, reflecting the overall criminality involved. It prevents the imposition of a disproportionately long sentence that would result from simply adding the sentences for each individual crime.

Rehabilitation: Sentencing aims to help offenders change their behaviour to prevent future offenses, through programs like counselling or skills training.

Deterrence: The sentence should discourage the offender (specific deterrence) and others (general deterrence) from committing similar crimes.

Denunciation: The sentence is used to publicly condemn the criminal's conduct as unacceptable to the community.

Protection of the community: Sentencing aims to remove offenders from society when necessary to keep the public safe.

Factors determining the sentence

9. Judges weigh both mitigating and aggravating factors to arrive at a just and individualized sentence.

Aggravating factors

10. These increase the severity of the offense or the offender's culpability and justify a harsher sentence. They include:

Premeditation: The crime was planned rather than impulsive.

Use of a weapon: Committing the crime with a weapon, especially a deadly one, is a serious aggravating factor.



Vulnerability of the victim: Offenses targeting vulnerable individuals, such as children, the elderly, or those with disabilities, are viewed more seriously.

Criminal history: Repeat offenders generally receive longer sentences.

Hate crime motivation: Crimes motivated by bias or prejudice (e.g., based on race, religion, or sexual orientation) warrant harsher penalties.

Abuse of authority: Committing a crime while in a position of power or trust is an aggravating factor.

Significant harm or loss: The extent of physical or psychological harm, or financial loss, is considered.

Mitigating factors

11. Mitigating factors can reduce an offender's culpability or the seriousness of the offense, potentially leading to a lighter sentence. Examples include being a first-time offender, pleading guilty to show responsibility, and demonstrating remorse and cooperation with law enforcement. Mental illness or impairment, acting under duress, playing a minor role in a crime, youth, and efforts to compensate victims are also considered
12. Of course, mitigation takes a central stage, considering the seriousness of the offense and the circumstances surrounding the accused's behavior during the incident, as well as their prior history.
13. The court, having considered the period the accused was in custody, approximately 6 years before conviction, and all other circumstances. The court's decision is rooted in the principles of fairness and justice, ensuring that all factors are carefully considered. Thus, the court makes the orders.
 - I. The accused will serve two more years' imprisonment and thereafter will be on probation for 12 months, during which [specific conditions of probation].
 - II. Right of appeal explained.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAROK THIS 9TH OCTOBER 2025.

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CHARLES KARIUKI

JUDGE

