



**Republic v Ngaira (Criminal Case 42 of 2016)  
[2025] KEHC 15268 (KLR) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15268 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE 42 OF 2016  
AC BETT, J  
OCTOBER 28, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**NELSON NGAIRA ..... ACCUSED**

**RULING**

1. The Accused, Nelson Ngaira, having been charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, pursuant to a plea agreement dated 18<sup>th</sup> February 2025, agreed to plead guilty to the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.
2. Having conducted an inquiry in compliance with Sections 137F and 137G of the Criminal Procedure Code, the court was satisfied that the Accused understands the implications of the plea agreement and that it was entered freely and voluntarily without coercion.
3. The factual basis of the offence is that on 24<sup>th</sup> January 2013, at Mukulusu Village, Mukulusu Sub-Location, Shenyalu Division, Kakamega East Sub-County, within Kakamega County, the Accused unlawfully killed Martin Liyali by cutting him on the head with a panga.
4. In mitigation, the Accused said he is remorseful and regrets the incident. He prayed for leniency, citing his period in custody and his family circumstances. The pre-sentence report indicates that the Accused is a young man blessed with one child who was left under the care of the Accused’s mother upon his arrest.
5. The prosecution submitted that the Accused is not a first offender and had committed another offence while out on bond, demonstrating that he has not learned from his actions. The pre-sentence report notes that the Accused is currently serving a two-year sentence arising from a conviction in Criminal Case No. E649 of 2024 for an assault he committed while he was out on bail during the pendency of



this case. He is said to be a habitual offender with anti-social tendencies involving theft, destruction of property, and animal killings, which required compensation to the aggrieved parties.

6. The Accused's actions demonstrate a disregard for human life. He was carrying a lethal weapon while attending a funeral ceremony. He attacked the deceased without any apparent provocation on the part of his victim. His action has had a profound negative impact on the victim's family, who lost a young, promising son. The community's interest in protecting its members from violent crimes must be prioritized. The court has also considered the impact of the offence on the victim's family and the need for retribution. The family of the victim deserves retribution to have a sense of justice. In the case of Charo Ngumbao Gugudu v Republic [2011] KECA 387 (KLR), the Court of Appeal held that courts must impose a sentence that is commensurate to the offence and rendered itself thus:-

“Further, the law is that sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that it is thus not proper exercise of discretion in sentencing, for the Court to fail to look at the facts and circumstances of the case in their entirety before settling for any given sentence – see *Ambani vs. R.* [1990] KLR 161”.

7. After carefully considering the mitigation, the pre-sentence report, and the Judiciary Sentencing Guidelines, the court finds that the Accused deserves a custodial sentence. The sentence must be proportionate to the offence and geared toward affording the Accused an opportunity for rehabilitation. See *Dahir Hussein v Republic* [2015] eKLR.
8. Considering the entire circumstances, the court sentences the Accused to 17 years' imprisonment. The two years spent in custody shall not be factored into the sentence as they are in respect of an independent conviction and sentence altogether.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 28<sup>TH</sup> DAY OF OCTOBER 2025.**

**A. C. BETT**

**JUDGE**

**In the presence of:**

Ms. Chala for the Prosecution

Mr. Osango for the Accused

Court Assistant: Polycap

