



**Republic v Khaihira & another (Criminal Case 3 of 2021)
[2025] KEHC 16181 (KLR) (6 November 2025) (Sentence)**

Neutral citation: [2025] KEHC 16181 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE 3 OF 2021
JN KAMAU, J
NOVEMBER 6, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

PATRICK CHENGO KHAIHIRA 1ST ACCUSED

JUSTON AYODI KEYA 2ND ACCUSED

SENTENCE

1. On 17th July 2025, this court convicted the 1st and 2nd Accused persons herein for the offence of the murder of Humphrey Swekenye Khachira (hereinafter referred to as “ the deceased”) contrary to Section 203 as read with Section 204 of the Penal Code thereof under Section 215 of the Criminal Procedure Code Cap 75 (Laws of Kenya).
2. In their mitigation, the Accused persons stated that they were remorseful and regretted the offence. They said that they were both young men with young families and parents who depended on them. The 1st Accused person stated that he was forty-eight (48) years of age while the 2nd Accused person indicated that he was forty- five (45) years of age. They pointed out that the result of the action was not intended and urged this court to mete out a non-custodial sentence as the Pre-Sentence Reports were favourable to them.
3. On its part, the Prosecution opposed a non-custodial sentence. It noted that although the Probation Office had left the sentencing to the discretion of the court, the Accused persons were not remorseful as they had continued to deny having committed the offence even after being convicted. It pointed out that it would be difficult to supervise the Accused persons when they had continued to deny having committed the offence. It requested the court to do justice for the secondary victims not only for justice to be done but for justice to be seen to have been done.



4. It further asked this court to consider the objectives of sentencing and the injuries that the deceased had sustained which were fracture to the neck and ninety (90)- ninety- five (95) per cent burn injuries. It urged this court to mete out a sentence that was commensurate to the injuries that the deceased sustained.
 1. According to the Pre-sentence Report of Mariam Korir, Probation Officer, Vihiga County dated and filed on 18th August 2025, the 1st Accused person was forty-eight (48) years old. He attended Mungavo Primary School but dropped out in Class Seven (7) due to financial constraints at home. He, thereafter, engaged in small-scale income generating activities within the community initially selling mandazi before joining the boda boda (motorcycle) taxi industry which became his primary occupation.
 2. He was married and was blessed with five (5) children. He had no medical or psychological complications history. He was a Christian and a first offender. He had no history of alcoholic abuse.
 3. He denied having committed the offence and averred that he only raised an alarm after which neighbours came whereafter he heard that the deceased had been killed and burnt along the road. He sought for the leniency of court. He pleaded with court to consider his family circumstances stating that they were dependent on him and would suffer hardship if he was incarcerated.
 4. His family vouched for him as a respectful and well-mannered individual. They expressed their support and willingness to stand by him should he be granted an opportunity for rehabilitation.
5. The Local Administration and the community opined that the 1st Accused person lived well in the community and related well with people. They indicated that he was a trust-worthy person and most community members trusted him. They therefore urged this court to consider him for a non-custodial sentence.
6. The Probation Office opined that although the 1st Accused person was suitable for community rehabilitation, considering the nature of the offence, it urged the court to dispense the matter as deemed fit.
7. In her Pre-sentence Report dated and filed on 18th August 2025, the said Mariam Korir indicated that the 2nd Accused person was aged forty-five (45) years. The Pre-Sentence Report further stated that the 2nd Accused person attended Kaptieni Primary School and Shivembe Primary School but dropped out in Standard Seven (7) due to financial constraints. He moved to Kericho where he engaged in tea picking for five (5) years. He returned home in 2018 and engaged in brick-making for sale, operating a barber shop and working as a casual labourer. Through the various ventures he was able to buy a piece of land where he settled with his family. He was elected as the Chairperson of the Community Policing Committee, a position he had held for approximately ten (10) years. He was a Christian.
8. He denied having committed the offence and claimed that he was accused wrongfully. He sought for leniency of court stating that he was his family's sole-breadwinner and that a custodial sentence would further worsen his family's situation. He pointed out that as he was a person of repute with a good standing in the community, he should be granted a non-custodial sentence, a community-based sentence that would allow him to reintegrate into society and resume his familial responsibilities.
9. The Local Administration and the community vouched for the 2nd Accused person being given a non-custodial sentence stating that he was a long-standing, well-known member of the community who



had maintained cordial and respectful relationships with fellow residents. They added that he lived peacefully among his neighbors, demonstrated a consistent adherence to Christian values and was regarded as a morally upright and trustworthy person.

10. The Probation Officer opined that although the 2nd Accused person was suitable for community rehabilitation, considering the nature of the offence, she urged the court to dispense the matter as deemed fit.
11. The deceased's family was still bitter about the loss of their kin. They opined that although stealing was wrong, the brutal and merciless manner the deceased was killed was not justified. They pointed out that the 1st Accused person had not sought for their forgiveness even for the time he had been out on bond. They described the deceased as a young man who was helpful and played an active role in handling household chores. They emphasised the need for justice to be served for the deceased.
12. 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.
13. It was important that the sentence communicate to the community, condemnation of their criminal act. The sentence would indirectly send a strong signal to deter would be offenders from committing such an offence. The sentence also had to be one that was hinged on retributive justice for the secondary victims.
14. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of the offence at the time of sentencing them, chances of the 1st and 2nd Accused persons being reintegrated in the society would be next to impossible as there were possibilities of being harmed.
15. After serving a sentence, the offenders could rejoin society as reformed persons capable of reintegration into the society. They would have learnt their lessons and others would have learnt through them. Killing someone was an abomination in the society and hence justice not only needed to be done but it had to be seen to be done.
16. This court looked at the Post-Mortem Report dated 29th November 2019 and noted that the deceased died as a result of exsanguination due to major neck vessel injury secondary to associated 90%-95% burns. This was evidence of serious assault of the deceased by both the 1st and 2nd Accused persons.
17. Although both they and their families pleaded for leniency and the Probation Office had left the sentencing to the discretion of the court as there was positive recommendations from the community and the Local Administration, this court did not find it prudent to grant them a non-custodial sentence due to the nature of the offence. The injuries the deceased sustained showed the malice that they had and showed their intention of killing him. The 1st Accused person beat the deceased with a heavy club while the 2nd Accused person hit him with three (3) foot metal construction rod normally called Y8. The crowd that was with them collected dry leaves and placed them on the deceased. The 1st Accused had a container with petrol. He sprinkled the petrol on the deceased and one Simbalu struck a match and threw it on the deceased who burned without assistance.
18. Both Accused persons had continued to deny that they committed the offence. This was evidence that they were really not remorseful of what happened to the deceased or they did not acknowledge and/or appreciate the magnitude of the offence that they had committed. It was immaterial that the deceased



was a thief as they alleged. Although they were in a mob, they actively participated in inflicting serious injuries to the deceased leading to his harrowing death. Indeed, the deceased must have undergone a lot of pain before he finally succumbed. They ought not to have taken the law into their hands.

19. Having considered the facts of this case and the 1st and 2nd Accused persons' mitigation and weighed against the death sentence that was prescribed for the offence of murder under Section 204 of the Penal Code, this court came to the firm conclusion that a non-custodial sentence would be unjust as a life was lost in very unfortunate circumstances. It was the considered view that a sentence of twenty (20) years imprisonment would be suitable and adequate herein. This is an offence that would have attracted a stiffer sentence due to the aggravating circumstances and injuries that the deceased sustained. However, the court meted out this lenient sentence because both Accused persons acted within influence of mob psychology. This court could also have meted out against them a less stiff sentence if they had entered into a Plea Agreement and thus save the court the time to have heard this case.
20. Going further, this court was mandated to consider the period the 1st and 2nd Accused persons spent in remand while their trial was on going in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).
21. The said Section 333(2) of the Criminal Procedure Code provides that: -

“Subject to the provisions of section 38 of the Penal Code (cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody” (emphasis court).
26. Further, Clause 4.6.20 (ix) of the Judiciary Sentencing Policy Guidelines provides that:-

“The Sentencing Court shall be guided by the sentencing principles and objectives set out in Part I of these the Guidelines in all resentencing hearings. The following mitigating factors were set out by the Supreme Court as particularly relevant in a resentencing hearing:...

(ix) Time already spent in prison by the convict...”
27. The requirement under Section 333(2) of the Criminal Procedure Code was restated by the Court of Appeal in *Ahamad Abolfathi Mohammed & Another vs Republic* [2018] eKLR.
28. The Accused persons were first arraigned in court on 14th January 2021. They were released on bond on 20th January 2021. They were convicted on 17th July 2025 and from that time they had remained in custody. The time they remained in custody therefore ought to be taken into consideration while computing their sentence.

Disposition

29. Accordingly, having convicted the 1st and 2nd Accused persons of the offence of murder contrary to Section 203 as read with 204 of the Penal Code, they are each hereby sentenced to twenty (20) years imprisonment which will run from today.
30. For the avoidance of doubt, the period the 1st and 2nd Accused persons spent in custody between 14th January 2021 and 20th January 2021 and from 17th July 2025 and 5th November 2025 before sentencing



be and are hereby taken into account while computing their sentence in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

31. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 6TH DAY OF NOVEMBER 2025

J. KAMAU

JUDGE

