



**Republic v Wafula & 2 others (Criminal Case E070 of 2021)
[2025] KEHC 16895 (KLR) (21 November 2025) (Sentence)**

Neutral citation: [2025] KEHC 16895 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE E070 OF 2021
JRA WANANDA, J
NOVEMBER 21, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

ERICK WAFULA 1ST ACCUSED

ALEX NYONGESA 2ND ACCUSED

GEOFFREY WANYONYI 3RD ACCUSED

SENTENCE

1. The 3 accused persons were charged with the offence of murder contrary to Section 203 as read with Section 205 of the Penal Code. The particulars were that on 2/12/2021, at Threeways Bar, Kaplolo Junction in Moiben sub-County within Uasin Gishu County, they murdered one Titus Kipchumba. Mr. Ondieki, Mr. Orina and Ms. Biwott, have been appearing as Counsels for 1st, 2nd and 3rd accused, respectively, while Prosecution Counsel, Ms. Muriithi, now appears for the State, having taken over conduct of the matter from Ms. Emma Okok.
2. The accused were arraigned on 21/11/2021, and eventually took plea on 6/01/2022. They all pleaded not guilty. After Court attendances and aborted hearing sessions on several dates, the 1st accused, Erick Wafula, entered into plea bargain discussions with the State which eventually culminated to the plea bargain Agreement dated 22/07/2025 which indicated that the 1st accused had agreed to plead guilty to the lesser charge of manslaughter. The 2nd and 3rd accused persons' trial was therefore deferred to allow for conclusion of the plea bargain hearing in respect to the 1st accused.
3. The matter then came up for plea bargain hearing on 19/09/2025. The accused was sworn on oath, and after examining him, I recorded my satisfaction that Section 137F-137G of the Criminal Procedure Act, governing the plea bargain process had been complied with, that the 1st accused had signed the agreement together with his Counsel, voluntarily, and without any coercion, and that he fully



understood the effect thereof. I thus allowed the 1st accused to take a fresh plea, now on the fresh charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code, which was done, and upon which he then pleaded guilty. The statement facts of the case (factual basis) was then read out to the 1st accused. The same was basically as follows:

“On 2/12/2021, the deceased, Titus Kipchumba, was at Ambrose Bar located in Kaplolo Junction having a drink when he was joined by two of his friends. namely, Shadrack Too and Brian Kenei, and that around 7:00pm, the trio left the bar and proceeded to Three Ways Bar located in the same area. At the entrance of the bar, an argument ensued between the deceased and some 5 men revellers, the accused was among them. On entering the bar, the deceased picked a quarrel with the bar owner prompting him to chase them away and the trio opted to leave. While outside, the trio again decided to go back to the bar where they started entertaining themselves. After a short while, the five men revellers, who had argued with the deceased, went outside the bar and the deceased followed them. Soon after, his friend Shadrack Too heard someone screaming and went outside to check. There he saw the deceased lying down unconscious and two of the 5 revellers standing some few meters from him. One of the them was holding a piece of timber and daring anyone to approach him. Shadrack Too rushed back to the bar and alerted Brian Kenei, Rhoda Ruto, Gilbert Rotich and Titus Kiplimo and together they went outside and saw the deceased lying down unconscious with visible head injury. By this time, the 5 men were escaping towards a nearby potato joint. Together with the help of other member of public who had already gathered, they chased after them, arrested them and took them to where the deceased was lying. The deceased had already started vomiting and foaming at the mouth. While inside the bar, two of the men managed to escape. The deceased’s brother, Kiptoo was informed of what had transpired and he came with a motor-cycle rider and together they proceeded to take deceased to Iten Hospital, but unfortunately, the deceased died on the way. Police officers came and took the 3 men who had been arrested and took them to Karuna Police Station. At the scene the police recovered as exhibits a mobile phone make Neon Ray IMEI 35555210721536, and a black belt which belonged to the accused. On 8/12/2021, Dr Sharon, a pathologist, conducted postmortem examination on the body of the deceased and opined that the cause of death was due to head injury with linear fracture of skull bone, subdural and epidural haematoma, with possible cause of being hit by a blunt object. The accused was later charged for offence of Murder.”

4. Prosecution Counsel then produced the Post Mortem Report dated 8/12/2021, the Neon Ray Mobile phone, and the black belt as exhibits.
5. When asked to confirm or refute or comment on the correctness of the said facts read out, he admitted the same as being correct and true. Satisfied that the statement read out disclosed sufficient factual basis for the charge, this Court accordingly convicted the 1st accused of the offence of manslaughter.
6. Regarding sentencing, Ms Muriithi informed the Court that there was no previous records on the 1st accused hence he could be treated as a first offender. She further urged that the 1st accused is a young man and by entering into the plea bargain, had saved the Court precious time. Regarding the incident, she observed that the accused ought to have been more careful.
7. On his part, Mr. Ondieki, Counsel for the 1st accused, in mitigation submitted that the 1st accused is very remorseful, he is quite young, and he is an orphan. He submitted further that the 1st accused grew up in very hostile circumstances, and he has no family, or children, or wife. He urged that as the Lawyer for the 1st accused, he has become like his only relative as no one ever comes to visit him. He



also observed that the 1st accused is a first offender, and pleaded with the Court to exercise mercy upon him as he has undergone hostility all his life. He reminded the Court that the Bible states that "God is the only Father", and asked the Court to consider a non-custodial sentence as the 1st accused has gone through enough pain in his life already. He reiterated the circumstances under which the incident occurred and observed that it was in a bar which means that the players were all drunk and thus their judgment was impaired, that no one expected anyone to die and that it was unintended.

8. I then directed that a pre-sentence Report be filed, which was done. The Report, dated 8/10/2025 and prepared by the Probation & Aftercare Service (Uasin Gishu County Office) indicated that it had been compiled after interviews with, inter alia, the 1st accused, his family, the victim's family and relatives, and a village elder, and also after assessing relevant circumstances, and perusing and studying relevant documentation.

Determination

9. The applicable law on sentence for the offence of manslaughter is Section 205 of the Penal Code which provides as follows:

“ Any person who commits the felony of manslaughter is liable to imprisonment for life”

10. In determining the appropriate sentence to impose, I have considered the manner in which the offence was committed, namely, that the accused was in a group of young revellers which seems to have got involved in an altercation with another similar group of young men in a bar. It is said that both groups were drunk at that time, and ended up into a fight. It is during this fight that the deceased suffered the fatal injuries. The incident was clearly a case of youthful impulsivity laced with poor decision making. I have also taken into account the fact that the 1st accused has been described as a first offender. He also entered into the plea bargain agreement and thus pleaded guilty to the lesser charge of manslaughter, and in the process, saving much judicial time. I have also considered the apparent remorse displayed by the 1st accused.
11. I have also considered the contents, findings and recommendations of the Pre-sentence Report. The salient observations I make from the Report are that the 1st accused comes from what can safely be described as a dysfunctional family, he is currently 27 years old and was 22 years old at the time of the incident. He never progressed beyond primary school, he is not married and was engaged in casual work. He is also said to have been drunk during the incident and regrets and is remorseful about the incident as evidenced by his entering into the plea bargain agreement. Regarding the family of the deceased, they were said to have come to terms with his death and that, although they were not opposed to the imposing of a lenient sentence pursuant to the plea bargain agreement, they still wish to “see” justice for the death of the deceased who was only 20 years old at the time of the death, and just beginning to build his promising future. The local Chief, on his part, is reported to have confirmed that the 1st accused was not known for any criminal conduct and it is generally agreed that the incident was unfortunate and isolated. At the end, the Report recommended a non-custodial sentence.
12. I find the above to constitute mitigating circumstances fit to be taken into account.
13. I also note that under the plea bargain Agreement, the Prosecution recommends a prison sentence of 20 years, while the defence recommends a prison sentence of 10 years.
14. I have also taken into account the objects of sentencing as set out in the Judiciary Sentencing Guidelines and those set out in the case of Francis Muruatetu & another v Republic [2017] eKLR. I have also



taken into account the age of the 1st accused and his desire for re-integration to the community to rebuild his life.

15. I find no serious aggravating circumstance in this case save that the post mortem report paints the grim picture of the deceased having suffered a severe head injury caused by a blow inflicted by a blunt object. The blow was obviously meant to inflict maximum injury, as the force used in the assault was evidently excessive and with no justification whatsoever. The 1st accused and his accomplices ought to have avoided such needless fights. As quipped in Shakespeare's Henry IV, Part 1 "discretion is the better part of valor". In other words, caution and good judgment is preferable to rash courage. For the poor decisions made by the 1st accused and his group, a young life was needlessly cut short and justice must be rendered to atone for that needless loss of life. Indeed, the family of the deceased, although they gave their blessings to the plea bargain agreement, deserve some comfort that the Court understands their pain. Only that shall give them closure.
16. In the circumstances, I find that a non-custodial sentence would not be appropriate in this case. A life was lost and the Court must reiterate that it is not acceptable to take a human life extra-judicially whatever the circumstances or level of provocation. I will thus impose a prison sentence but since I find no indication that the 1st accused was at any point released on bond or bail since taking plea in 2021, the period of serving the prison sentence shall clearly be mitigated as a result of consideration of the period already served in remand custody.

Final Orders

17. Considering all the relevant principles and circumstances, I make orders as follows:
 - i. I hereby sentence the 1st accused, Erick Wafula, to serve eight (8) years imprisonment.
 - ii. As stipulated under Section 333(2) of the Criminal Procedure Act, the period already spent in remand custody by the 1st accused before sentence shall be deducted in the computation of the period of imprisonment to be served.
 - iii. The trial for the 2nd and 3rd accused shall now proceed.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 21ST DAY OF NOVEMBER 2025.

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WANANDA JOHN R. ANURO

JUDGE

Delivered in the presence of:

All 3 Accused (present physically in open Court)

N/A for Advocate for the 1st Accused

Ms. Orina for the 2nd Accused

Ms. Sarah Nyoike for the 2nd and 3rd Accused

Ms. Muriithi for the State

C/A: Brian Kimathi

