

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT VIHIGA
CRIMINAL CASE NO 13 OF 2021

REPUBLIC

VERSUS

OSCAR KIHARA.....
.....ACCUSED

SENTENCE

1. The Accused person herein was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code Cap 63 (Laws of Kenya). He entered into a Plea Bargain Agreement on 18th December 2025 whereupon this court convicted him of the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.
2. The facts of the case were that on 5th February 2017 at about 1900 hours, Francs Chumba Kiragava (hereinafter referred to the deceased”) was on his way home and at the time, he was shouting due to drunkenness. The noise attracted the Accused person who lived along the road. He picked a rungu and went to where the deceased was and started beating him with it. The Accused person’s wife, Selfine Musavi, rushed to her father-in-law’s house, one James Malese, and informed him that the Accused person was beating the deceased but urged him not to intervene.
3. The deceased was rescued by Simon Sambaya and Patrick Amayi who were passing by and they took him to his mother’s house. The deceased’s wife, Mary Chumba, rushed him to Jumuia Kaimosi Hospital. When she went to hospital the following day, she was

informed that the deceased passed away while undergoing treatment. The said James Malese asked the deceased's wife where the Accused person was and she told him that he left the previous night and did not come back.

4. A report was made at Serem Police Station and police officers visited the scene of the incident where they found the deceased with injuries on the head and right leg lying in the house **(sic)**. The police officers visited the Accused person's house but they did not find him or recover the murder weapon.
5. A postmortem examination was carried out on the body of the deceased at Vihiga County Referral Hospital on 9th February 2017. The Pathologist formed the opinion that the cause of the deceased's death was cardiorespiratory failure secondary to multiple organ injuries with associate acute haemorrhage. The Postmortem Report dated 9th February 2017 was produced as Exhibit 1.
6. On 22nd April 2017, the Accused person was arrested at Matete Market in Kakamega and escorted to Kabras Police Station. He was later handed over to Serem Police Station. After the investigations were concluded, he was charged with the offence of murder.
7. Having entered into a Plea Agreement, the Accused person proposed that he serves a sentence of ten (10) years while the Prosecution recommended a sentence of fifteen (15) years imprisonment.
8. In his mitigation, the Accused person conceded that the Pre-Sentence Report was negative. He expressed remorse because his

actions created a series of other reactions. He said that his parents and family were forced to relocate to another place but they had been warmly welcomed there. He averred that he would not cause any threat to the victim's family as he moved into the new area.

9. He stated that while in custody, he contracted a disease that caused him to lose his hearing. He believed that he was fully rehabilitated and requested the court to release him so that he could go home and assist his elderly parents. He urged this court to give him a non-custodial sentence.

10. On its part, the Prosecution emphasised that the Pre-Sentence Report was negative and urged this court to mete upon the Accused person a custodial sentence as was also recommended by the Local Administration and the community. It was emphatic that the said sentence would serve as a deterrent to him and others.

11. It pointed out that the deceased's wife was still bitter due to her husband's death. It asked this court to look at the injuries that the deceased sustained and impose a sentence that was commensurate to the offence and in so doing, to be guided by the Sentencing Policy Guidelines and objectives of sentencing. It sought that justice not only be done to the victim but that the same be seen to have been done.

12. According to the Pre-Sentence Report of J. Sahani, Probation Officer, Vihiga County that was dated 13th November 2025 and filed on 14th November 2025, the Accused person was aged forty (40) years old. He attended Mukwe Primary School but dropped out in Class Four

(4) due to difficulties in grasping academic concepts. His parents separated when he was young and was raised by his father. He had to fend for himself forcing him to engage in casual work at an early age. His mother returned home after he was already an adult and married.

13. He worked in various sugarcane growing areas between January 2016 and 20th February 2017. He enjoyed good health after he was treated from Tuberculosis (TB) which he contracted after his incarceration. However, he was left with a residual hearing impairment that affected his communication.

14. The Pre-Sentence Report indicated that he was not related to the deceased who they lived with harmoniously. He denied having committed the offence blaming it on an unknown person. He said that his neighbour, Patrick Isiavale and his wife informed him of the incident and they took the deceased to his home and later on to the hospital. He was adamant that he only assisted the deceased. He had told the Probation Office that he would enter into a Plea Agreement merely to bring the matter to a close but not because he had committed the offence.

15. The victim's family was still bitter and maintained that the deceased, who had just recently retired from being a security officer, informed them that it was the Accused person who assaulted him. It was upon hearing the accusation that the Accused person disappeared. He was later arrested for having committed the

offence. The victim's wife had suffered psychologically after losing her husband in a very violent manner.

16. The Local Administration and the community confirmed that the deceased was a habitual drunkard and that on the material date, he was shouting that the occupants of all the houses that he was passing were suffering from HIV/ AIDS. This provoked the Accused person who came out of his house and attacked the deceased with a stick of a jembe. The Accused person disappeared after the incident and was arrested after about two (2) months. The Local Administration and the community decried the rise in murder cases in Hamisi County and recommended that a deterrent sentence be meted upon the Accused person.

17. The Probation Office observed that the Accused person merely wanted to enter into a Plea Bargain Agreement to expedite the conclusion of the case and hence, it did not find him to have been suitable to be considered for community rehabilitation.

18. 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.

19. It was also important that the sentence communicate to the community, condemnation of his 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.
20. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of his offence at the time of sentencing him, chances of the Accused person being reintegrated in the society would be next to impossible as there were possibilities of being harmed.
21. Killing someone is an abomination in the society and that explained why the deceased's family and community did not want him released on a non-custodial sentence. Justice not only needed to be done but it had to be seen to be done.
22. It was clear from the facts of the case and the Pre-Sentence Report that the Accused person assaulted the deceased with a stick of a jembe that caused multiple injuries to his head leading to a skull fracture, fracture of the spine and fracture of the tibia- fibula and radial ulnar amongst other injuries resulting in his death. The Accused person's version of what transpired did not tally with the findings from the Social Inquiry by the Probation Office.
23. Having considered the facts of this case, the Accused person's mitigation, the Prosecution's response thereto, the Pre-Sentence Report and bearing in mind that sentencing was the sole discretion of the court, this court came to the firm conclusion that a sentence

of fifteen (15) years imprisonment was suitable and adequate herein purely because the Accused person entered into a Plea Bargain Agreement. The sentence would have been lower had he not sought to enter into a Plea Bargain Agreement earlier to save the court value resources of time. It is also important to point out that if the matter had proceeded as a murder case, this court would have meted out on the Accused person a stiffer sentence due to the multiple injuries that he inflicted on the deceased.

24. Going further, this court was mandated to consider the period that he spent in remand while his trial was on going in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

25. 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, the Judiciary Sentencing Policy Guidelines provide that:-

“The proviso to section 333 (2) of the Criminal Procedure Code obligates the court to take into account the time

already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.”

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 person was arrested on 23rd April 2017. He did not appear to have come out on bond. He was convicted on 18th December 2025. The period that he spent in custody as his trial was ongoing ought to be taken into consideration while computing his sentence in line with Section 333 (2) of the Criminal Procedure Code.

DISPOSITION

29. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to fifteen (15) years imprisonment to run from the date of this Sentence.

30. For the avoidance of doubt, the period between 23rd April 2017 and 17th December 2025 be and is hereby taken into account while

computing his 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 **18th** day of **December** 2025

J. KAMAU
JUDGE

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